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Committee on Confederation

QUEBEC

IN THE CANADA OF TOMORROW

Translated from LE DEVOIR
Special Supplement - June 30, 1967

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QUEBEC

IN THE CANADA OF TOMORROW

Translated from Le Devoir

Special Supplement - June 30, 1967

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Foreword

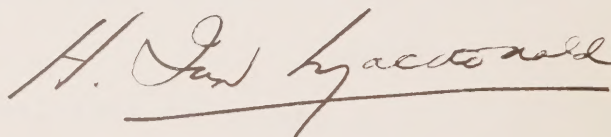
In the current debate over the future of Canada, it has often been difficult - if not impossible - to find a single source that presented a comprehensive view of the variety of opinions and options dealing with the many and complex constitutional, cultural and economic issues which confront Canadians. The publication, first in a three-volume looseleaf edition and more recently in a single-volume hardcover edition, by the Ontario Advisory Committee on Confederation of its Background Papers and Reports was intended to fill part of this void. However, there remained the lack of a similar publication which presented a range of views from, on and about French Canada in general and the Province of Quebec in particular. This lack was largely offset on June 30, 1967 when the Montreal newspaper, Le Devoir, published a supplement to its regular issue of that day on the much discussed question of special status.

Mr. Claude Ryan, the editor of Le Devoir, asked many writers, both French and English, to contribute articles on issues concerned particularly with the role of Quebec in Canada. The intention of the survey was not to present one view of this subject but rather to illustrate the many views which have been put forward.

A number of articles found in this English-language edition did not appear in the original supplement. Those by Messrs. Dansereau, Falardeau, Hurtubise, R. Morin, Prince,

Sauriol and Szabo were published during July, 1967 in Le Devoir. The article by Professor R. M. Burns is published here for the first time although the original intention was for it to appear in Le Devoir. As these additional articles bear directly on the theme of this collection, it was thought appropriate to include them in this edition.

The members of the Ontario Advisory Committee on Confederation considered that they would be performing a useful service in having the original edition translated and, at least initially, distributed to those persons who attended the Confederation of Tomorrow Conference held in Toronto, November 27-30, 1967. The response from this limited distribution was most encouraging, and it was decided therefore to publish this second edition of the translation. The Committee is grateful both to Mr. Ryan and the other contributors to this collection for their permission to publish an English edition. It is the hope of the Committee that this volume will provide a useful insight to the ideas expressed by many Canadians, but especially French-speaking Canadians, on some of the more contentious contemporary issues within our country.

A handwritten signature in dark ink, reading "H. Ian Macdonald". The signature is written in a cursive style with a horizontal line underneath the name.

H. Ian Macdonald
Chairman
Ontario Advisory Committee
on Confederation

May, 1968

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Balance-Sheet Of A Century

Richard Arès*

One can take many points of view in drawing up the balance sheet for the first century of Canada's present Constitution. I shall take the three which seem particularly important to me in the present circumstances: the respective viewpoints of Canada, French Canada and Quebec. I shall base my remarks on the concrete grounds of sociological, historical and political fact and not on juridical theory or abstract constitutional ideals to which it would be a question of comparing our fundamental laws. Every constitution is created with a given people in mind and can only be judged in terms of services rendered or still being rendered to this people. Thus, the first question we must ask ourselves is the following: has the British North America Act, adopted in 1867 and still serving as our Constitution, served the interests of the Canadian people well?

There is no overall answer, no simple yes or no. As is to be expected, the balance sheet of the 1867 Constitution contains both debits and credits.

First, among the latter, is the very significant fact that, unchanged and for one hundred years, the Constitution

* Father Richard Arès, S.J., is Editor of the review Relations.

has presided over the rapid and continuous development of Canada and its people. Obviously, it is not solely responsible for such progress but neither has it been an obstacle to it and this, in itself, is worthy of note. Moreover, it has even favoured this progress on many occasions. What was the Canada of 1867? A more or less close federation of four provinces still under British tutelage, dependent on a rural economy, and containing together approximately three million inhabitants (exactly 3,485,761 in 1871). Today's Canada is made up of ten provinces and more than twenty million inhabitants. It is highly industrialized and has a standard of living that is one of the highest in the world. That all of this could come about without constitutional upset is a strong point in favour of the Act of 1867.

It must also be recognized that this Constitution has greatly contributed to the unity of the different regions, as large as they are varied, whether geographical, sociological or political, that make up Canada. The federal principle it enunciates has assured the country both of a certain cohesion, as a result of the efforts of the central government, and a great diversity, jealously defended by the provinces. It has also permitted Canada to come to grips with serious difficulties created, for example, by wars, economic crises, ethnic conflicts, etc., the political pendulum swinging, as the situation requires, either towards centralization or decentralization without the necessity, in most cases, of modifying the text of the Constitution.

Among its debits, from the Canadian point of view, are the aging, the vagueness and the omissions of the Act of 1867. Whoever today has the courage, and he will need it, to read the 147 sections of our Constitution cannot help but be struck by the aging of most of them. Not only is it a question of purely legislative texts which are dry, boring and uninspiring but also, and what is worse, many of these sections have become outmoded, useless and valueless and simply impede the reader's progress. Worse still, the entire Constitution is steeped in a climate of colonialism and imperialism which Canadians today find increasingly distasteful. The colonial trappings of the Canadian Constitution, worn by a supposedly independent country, are not flattering to our nation.

Ambiguities and Omissions

If it were only a question of external trappings.... But the contents themselves, as the past century has shown, suffer from numerous ambiguities and serious omissions which have harmed the harmonious development of the Canadian people. In federal states, and in bi-ethnic countries, the division of powers and the protection of the minority are the most delicate constitutional points. Obviously, the Constitution is not the first to be blamed but, this notwithstanding, its lack of precision has added fuel to the debate. There is confusion, for example, regarding the distribution of fiscal resources and the unlimited powers of taxation and spending claimed by the federal government; even for provincial purposes, on the basis of the word "education" in section 93: does jurisdiction over education include culture, universities and research?

There is confusion especially over the matter of guarantees made to Catholic and French schools and, in general, to the language and culture of the French-Canadian community. I shall come back to this problem later; suffice it to point out here that such vagueness has contributed to the maintenance of a climate of tension and conflict that is a threat to internal peace and that, as a result, we must enter this point on the debit side of our constitutional balance sheet.

On the same side, we must place the omissions of the original text, omissions which can almost all be attributed to its colonial origins. I shall only mention three.

First, the Constitution lacks a general statement of objectives to serve as common goals for the provinces, the "national" communities, and the entire Canadian people. In a country as geographically, sociologically and politically divided as Canada, the Constitution should tell Canadians why they live together and what are the goals, the national purposes, they should fix for their common endeavour. Without this, it becomes a focal point of contention rather than a rallying point.

Moreover, the Act of 1867 lacks a specific text dealing with the power to sign international treaties and also the possibility for the provinces to enjoy international representation in matters under their jurisdiction. I shall limit myself to pointing out this omission without going into the details of the present debate as this would go beyond the scope of my article.

A third omission, about which a great deal has been said but which we have not as yet succeeded in rectifying is the absence of a general method for amending the Act of 1867. Canada must still call on London, showing each time its constitutional dependence, its colonial trappings and its old umbilical cord.

Such are the debits; do they outweigh the credits? I do not believe so. In general, the 1867 Constitution has not served the Canadian people too badly and, as a result, it is to be commended. Of course, I am speaking of the Constitution itself and not of the way in which certain people have used it.

The French-Canadian Viewpoint

Can one say as much from the French-Canadian standpoint? At first sight, the answer would seem to be in the affirmative. Is it not so that, under the Constitution, French-Canadians have increased in number from one to six million and that they have spread throughout all of Canada? Moreover, does not this same Constitution give official recognition to their language in the main federal bodies and does it not permit them to use it from one end of the country to the other? All this is true and it must be recognized that, even from the French-Canadian point of view, the 1867 Constitution has some good points in its favour. Unfortunately, it has shown itself to be powerless in protecting the French community and it has too often seemed to support with its authority the policy of assimilation practised against this community.

For those who wish to evaluate the 1867 Constitution fairly, it is essential to make a distinction between the text itself and the policy adopted by the majority with regard to the minority. The text, or more specifically sections 133 and 93 (the former guaranteeing the rights of the French language and the latter, the rights of denominational schools) has, against a historical background, proven to be wholly inadequate. Did this necessarily have to be the case? Let us remember that these same sections have fully protected the rights of the Anglo-Protestant minority in Quebec, and simply because there, the majority has practised quite another policy.

Thus, we must recognize the essentially ambivalent character of the Act of 1867: the guarantees this Act offered to the French-Canadian community were sufficient if the majority truly accepted association on the basis of equality, but they were insufficient under the opposite circumstances. In other words, Confederation could have evolved from the constitutional texts and accords of 1867 "in accordance with the principle of equality between its two founding peoples," as the mandate of the Laurendeau-Dunton Commission states. We could have had a Canada in which these two peoples would be true partners today, equal and free everywhere, not only in Quebec but in all the other provinces, to live and develop according to their language, their culture, and their national character. Did not the opening of the Canadian West give rise, for a time, to the hope that just such an interpretation would prevail? Did not

Manitoba declare itself constitutionally bilingual and did not the Northwest Territories agree to give French a place?

As we all know, these expectations were short-lived. Another interpretation prevailed, an interpretation narrow-mindedly limited to only the letter of the Constitution and rejecting the whole idea of a free and equal association of the two founding races in Canada. In line with this interpretation, it was decided to grant the French language only the strict minimum guaranteed by the Constitution in federal bodies and to let it die out, or even to combat it, in the provinces where it had some chance of developing. One need only recall, for example, the actions taken in this matter by Manitoba in 1890 and 1916, by the Northwest Territories in 1892 and by Ontario in 1912 with its Regulation XVII.

The Constitution can only be held to be negatively responsible for all this in the sense that it did not offer, at the suitable moment, the protection the French-Canadian community needed. Those who are positively responsible are the men who deliberately chose to make Canada an English-speaking country and not to tolerate French life except where they could not do otherwise, in other words, in Quebec. Had the Constitution been interpreted in a broad-minded and generous way, it could have served as the foundation for the creation of a bilingual, a bicultural and even a bi-national Canada. The proof lies in the fact that, for some time now, using the same constitutional texts, we are in the process of

restoring to the French language a certain place in the life of the country as well as in the life of the provinces, a fact underlined by the recent progress made in this direction by Ottawa, New Brunswick, Ontario, Manitoba and Saskatchewan.

In summation, from the French-Canadian point of view, it must be said that the 1867 Constitution contains, on the balance sheet of its first century, debits that outweigh its credits. It is not that it is hostile to the French-Canadian community, but rather that it has shown itself to be powerless in protecting this community from attempts at assimilation carried out by the provinces, and that it does not define with sufficient clarity the place to which French Canadians are entitled in Canada. The majority can do without such protection and such a definition, but not the minority: the experience of a century of living together bears eloquent and painful witness to this fact.

The Quebec Viewpoint

If we now take the Quebec viewpoint, particularly that of the French majority of the province, what evaluation can we make of the first century under the Act of 1867?

It would be unfair to be totally negative. During these hundred years, Quebec advanced considerably in all fields, going from one to six million inhabitants. Because of the Constitution, the province benefitted from full legislative powers in such important fields as property, civil law, natural resources, social security and education. If it has not always exercised these powers with imagination, strength and

competence, it is not the fault of the Constitution that granted them. Just as the proof of the pudding is in the eating, provincial autonomy can only show its value by being fully exercised. The Act of 1867 offered the French Canadians of Quebec ample opportunities to build a country in their image, a country where they would feel at home and whose destiny they could determine. Because of this precious right of provincial autonomy, it seems to me that Quebecers should not be too severe towards the text itself of the Constitution.

Obviously, and more than other Canadians, Quebecers suffer from the Act's stale colonialism, from its vagueness, its lacunae, and its weaknesses; however, they are aware that, using this same text as a starting point, Quebec-Ottawa relations could have taken another direction. To cite only a few cases: the Constitution is not to blame for the manner in which Ottawa set up a Supreme Court and made it a constitutional tribunal where only judges it chose would sit. Neither is it responsible for the fact that Ottawa entered the provincial field of unemployment insurance, old-age pensions and family allowances and that it succeeded, in 1949, in having London grant it the right to modify the Act of 1867 in matters which were its concern, a right that the Fathers of Confederation had not seen fit to grant. Also, in the area of finances, it is not the Constitution that is primarily to be blamed for the difficulties that sprung up between Quebec and Ottawa after the Second World War; the proof lies in the fact that, with the

same constitutional text, Quebec, which at the beginning received nothing or almost nothing from direct taxation, now has the right to collect 50 per cent of personal income taxes.

If the Constitution is not very popular in Quebec today, the main reason is to be found in the policies of a federal government desirous of centralizing everything and of likening Quebec to any other Canadian province. Such policies have always led to a confrontation the cost of which has been shouldered by the whole country. It is not within the power of Ottawa to make Quebec a province like the others when from the historical, sociological, political and even juridical points of view, it is not.

Historically, Quebec is the continuation of New France and its roots go back in time more than three hundred years; it is the first and most important native land of French Canadians, a title that no other province can claim. Sociologically, it is the province where the largest concentration of French Canadians makes its greatest impact, the only one in which they are a majority and in which they can organize and direct the government as they wish. Politically, due to the neglect of the federal government and the hostility of the other provincial governments in the matter of the French language and French culture, Quebec has become the defender and the spokesman of the French-Canadian nation. And finally, juridically, because of the Constitution, Quebec has a different status, a special status. Is it not the only constitutionally bilingual

province, the only one whose civil law is not only different but protected by the Constitution, the only one which has a right to a fixed number of representatives on the bench of the Supreme Court?

Thus, we can see that there are quite concrete facts that fly in the face of the frequently expressed claim that Quebec is only a province like the others and that it should be treated in a like manner. Each time Ottawa has acceded to this claim, it has poisoned relations with Quebec and has had either to recognize that it had reached an impasse or to proceed forcefully and destroy the obstacles in its path, to the very great detriment of so-called national unity. In both cases, the reputation of the Constitution has suffered from this and the Constitution has ended up becoming, in the eyes of a great many Quebecers, a kind of centralizing mechanism which Ottawa operates as it wishes and of which they must be wary because it has been used too often in the past to prevent the development of Quebec. This is the explanation for the loss of confidence which is now rampant in Quebec, not so much because of the text of the Constitution itself, but because its real possibilities for earning justice and respect and for ensuring equality and liberty have not been realized. As an Ottawa minister recently stated, the federal form of government is a delicate mechanism which needs very little to disrupt and shatter it. However, it must not be said that the provinces alone have played or are playing the game badly; the province of Quebec believes that the

policies of Ottawa are largely responsible for the difficulties that have been or are being met by the federal regime adopted in 1867. To change Quebec's impression, something more than startling declarations are needed; this something must be in the form of positive gestures, acts.

From this briefly sketched balance sheet of a century, I shall draw three conclusions.

1. In spite of its aged appearance and its colonial trappings, its vagueness, its omissions and its weaknesses, the Constitution does not deserve, in the year of its centenary, to be shouted down by its detractors or to be blamed for all our miseries. Essentially ambivalent in character, it could just as easily have been used to build a truly bilingual and bicultural country; the men who have used it have opted for a unilingual country, except for the Quebec "reservation" - which is what we have now. They are the ones, and not the Constitution, who must bear the initial and major responsibility.

2. The centralizing policies of the federal government and the assimilation policies of the provincial governments have contributed, in the eyes of French Canadians, to the discrediting of the 1867 Constitution. More and more, in Quebec, the idea of a new modus vivendi is gaining ground, to find between the two cultural communities the idea of a new constitution that would recognize the French-Canadian nation and would finally guarantee it real equality of rights and opportunities in a new formula for association.

3. Quebec has received ample powers and the first elements of a special status from the 1867 Constitution. It cannot forget that, for the times, this constituted an appreciable victory and gave vast responsibility to the province. The French-Canadian people, in effect, obtained a new juridical base from which they could recommence their long journey, started already a century earlier, towards full political autonomy. That this journey today seems only more or less successful is not, I repeat, the fault of the Act of 1867. It should have been a starting point; it has been too often made a destination point.

Moreover, nothing forces Quebec to believe that its political destiny and its juridical status are forever fixed by this old Constitution. As a result of the excessive inertia of the federal government and the hostility of the other provincial governments, the main responsibility for guaranteeing the survival of French culture and the French language in Canada has fallen, in effect, on the shoulders of the Quebec government. This government can only discharge so heavy a responsibility by exercising, with a maximum of competence and effectiveness, all the powers the Act of 1867 already grant it, and by continually enlarging the domain of its special status. Its sense of history and the pressures of the times oblige Quebec to march onwards and always upwards. One day it will be necessary to establish, in addition to the sociological, psychological and political situation already in existence, a corresponding new juridical status, if not a new constitution.

A New Constitution

Marcel Faribault*

Quebec's demand for a better constitution was not born yesterday, and it is not the only province to have made such a demand. Nova Scotia in 1867, New Brunswick in the early years of confederation, Manitoba during the schools' crisis, and Newfoundland in 1949 - none of them considered that the British North America Act had achieved the ultimate in federalism. Since 1963, however, Quebec's position on the constitution has taken definite shape. This has occurred for a number of important reasons so that it is now impossible to imagine that the present constitution may be gradually improved in a satisfactory manner. The result, therefore, has been a request for a constitutional conference if not a constituent assembly. The present federal government regards this with the same disfavour as John Diefenbaker regarded the adoption of the new Canadian flag.

One reason for this federal opposition is the inertia common to all institutions and vested interests. Another is the general ignorance of the motives of those who favour constitutional revision. These motives have perhaps never been sufficiently and formally set out. There is also the opposition from private interests which fosters myths, prejudices or scarecrows like those described by Shakespeare:

*Mr. Faribault is President of the General Trust Company of Canada.

We must not make a scarecrow of the law
Setting it up to fear the birds of prey,
And let it keep one shape till custom
 make it
Their perch and not their terror.
 (Measure for Measure)

Various kinds of objectives

It might, therefore, be useful to sum up at the outset the objections that have been raised to a constituent assembly as well as those to a new constitution.

The first set of objections is based entirely on traditional arguments and calls to its support the unitary vision of the Fathers of Confederation; the accomplishments of the first century of the federal system; the will to live together resulting from these accomplishments; the evolutionary nature of British institutions; the growing recognition of the French fact in Canada; the dangers of a leap into the unknown; the whole condensed into the saying: "In striving to better we oft mar what's well".

To these objections the whole Quebec tradition, as represented by its polemicists, historians, jurists and Premiers, either in their official declarations, in their opinions before the courts on constitutional matters or in the legislation they introduced, replies thusly: the events subsequent to the Confederation compromise gave excessive powers to the federal government; Quebec's economic development has been hampered precisely by this overcentralization; the desire to live together has not respected the autonomy and cultural dignity of French Canadians; the transformation of the British Empire into the Commonwealth,

and the disintegration of the latter as a result of specifically British crises, proves the ephemeral nature of non-institutionalized evolution; the French fact is not sufficiently recognized as would benefit the importance both of its Quebec homeland and its minorities in the other provinces; and finally, a leap into the unknown would indeed be the result of the inevitable secession that would be caused by a refusal to enter into a constitutional debate. The objections raised by these traditional arguments are refuted by the evidence of the Laurendeau-Dunton Commission in its preliminary report which noted the existence of a dangerous situation.

A second set of objections raised with regard to a constituent assembly is based on the following dangers: a) the royal prerogative in Canada would be threatened, the Queen possibly being deprived of her title as Queen of Canada; the Canadian state would be cut off from its principal mother country as it would be from its strong tie with the United States. All these objections are cloaked in typically British logic and refer to the number of English-speaking persons in North America, of English-speaking countries in the Commonwealth, of exchanges within the English-speaking Union, etc.; b) national unity would be threatened by Quebec separatists who are considered uncompromising and bound to make impossible demands on the rest of the country; the alternatives would be the use of force to keep Canada physically united, or else secession with disastrous consequences resulting from Quebec's position as a wall separating the four Atlantic provinces and the area to the west of Ontario; c) the Canadian parliamentary system would likely disappear or at

least would be sadly weakened as a result of the excessive demand for decentralization embodied in three formulae advocated in and for Quebec, i.e., associate states, special status and the right to secede.

It is not difficult to see how this set of objections is related to the first. What it attempts to do is to give a permanent character to our existing institutions. Without denying that Quebec has had anti-monarchist tendencies, impulses towards independence, or desires for outright separation, how can the refusal to discuss these matters be the best defence against them. The range between absolute monarchy and divine right on the one hand, and royalty as a symbol of membership in the Commonwealth on the other, is staggering. Separation is a far greater danger if nothing can be done but threaten to stop it by force or pander to it through weakness. In the end, the recognition of the existence of two cultures as historical as well as geographical facts, could very well lead to some constitutional formula the prototype of which could be found in Switzerland, Germany, Russia or Africa rather than in countries with an Anglo-Saxon tradition. Thus, it is as a result of excessive pessimism that one would expect, as an a priori condition of any constitutional conference, the expression of any extreme positions regarding republicanism, nationalism or corporatism. To think thusly is simply the strange but common reflex of building up defences through ideological absolutes.

The third set of objections stems from very different considerations based on personal philosophies. All of these

envisage and reject in advance any reduction of federal importance - in its responsibilities, in its practical pre-eminence, in its economic freedom of action, in its international prestige, or in the will of its majority. It is easy to identify those who raise these objections. They are the federal establishment, the party in power, doctrinaire socialists, economic planners, foreign businesses, the military professionals, and international oligopolies; in brief, all those for whom it is easier to deal with one centre of power, rather than several, be it to grasp it, to exercise it, or to make use of it. As expressed, these objections range from the friendly to the harsh, and press clippings related to them would make up a fair-sized album, excerpts from which it is not necessary to reproduce here.

Various approaches

If, for the sake of discussion, it is admitted that there is some truth in each of these objections, is it not necessary to recognize at the same time that a general view of the situation such as that held by all French Canadians, is not an obstacle to detailed solutions? Each of these solutions must be considered on its own merits but the number is such and the principles so important that they cannot be reduced to a process of gradual evolution. Moreover, this approach is in keeping with the spirit of the Canadian people which I expressed last year in the following terms:

But here is the crux of the problem. In order to convince Canadians to change their constitution, they first must be told what we have in mind since it is up to the reformers to give the explanations. However, we will never

succeed unless we approach it from three directions taking into account their varying antecedents. For the benefit of the population of British origin, the argument must take on the aspect of ending a tradition, and frequent reference must be made to various basic values while emphasizing the gradual nature of the changes in such a way that the present framework, the familiar environment and even the very manners of the adaption are retained. The French Canadians must be offered an intellectual rather than a moral approach the justification of which must be found, if possible, in both ancient and modern French thought. Equal importance must be granted to those great federalists, Montesquieu and Proudhon on the one hand, and to contemporary political thinkers, economists, sociologists as well as the most recent currents in international events on the other. To Canadians of other ethnic origins, and here we are thinking especially of the inhabitants of the Prairies and British Columbia, it is solely through the most basic practical approach, that is through economic and political arguments, that they may be convinced and this being understood as a long-run transaction rather than a simple preliminary agreement that would be more likely to attract them.

In the following sections, I shall attempt to show why a complete revision of the Constitution seems so necessary to me and to state some of the necessary criteria.

The Constitution

In the first place, the Canadian Constitution should be revised because it has become too cumbersome, too awkward and too unwieldy, as well as being incomplete in form and content.

As for form, considering the British North America Act to be the main, if not the only, document of our constitutional system, Mr. Maurice Ollivier, legal advisor to the federal Parliament, has found in the 661-page volume that he published in 1962 entitled The British North America Act and Selected Statutes that

since Confederation there have been 22 acts of the British Parliament, 4 orders-in-council, 52 federal acts concerning provincial affairs, of which 22 are under this precise heading, 9 outlining provincial boundaries, 19 dealing with natural resources, and 4 with marriage and divorce in certain provinces. In addition, there are 27 federal laws on constitutional matters, 11 documents on the Governor-General and 2 on Lieutenant-Governors. This makes a grand total of 105 unconsolidated acts or orders. In this day and age there is no other government, public institution or private company able to afford the luxury of such a proliferation and such a jungle.

But there is more to follow. The 1867 Act included 147 sections and 4 appendixes. Of these, 14 sections have been repealed, 17 sections and 2 appendixes have lapsed, 21 sections have been modified and 6 provisions have been added, for a grand total of 60 amendments as yet unconsolidated.

There is no better way to illustrate how much the written constitution has aged than by recalling the headings of the Act of 1867, of which 8 sections referred to the Union, 7 to executive power, 41 to the federal Parliament, 33 to provincial constitutions, 6 to the division of jurisdictions, 6 to the judiciary, 25 to taxation, 11 to the Intercolonial Railway, 2 to the admission of other colonies, and 18 to a variety of subjects. The whole document is written in a bombastic and incredibly verbose style without the least inspiration.

All those for whom the Canadian constitution is a statute, a law of the British Parliament, must accept this primary criticism of its form.

As for content, its inappropriateness manifests itself principally in four ways:

First, the Act is a British Act which should be brought to Canada through simple regard for dignity, and for the delays and general inconveniences of which the British Parliament is the first to be aware.

Second, the Constitution has no official French text; for that reason, it is still beyond a good third of the population.

Third, if it is true that the 1867 Act contains only a part of the Constitution, the rest being made up of old British laws, of long-standing traditions, of declarations of British parliamentary practice as well as the traditions and declarations of the Canadian Parliament, then the conclusion must be drawn that the whole document is quite literally obscure.

Finally, if the proposition is accepted that a federal constitution should, up to a certain point, serve as the prototype for the constitutions of the constituent members, i.e., the provinces, then this lack in Canada may be considered fundamental.

The Constitution: obsolete, imperialist and contradictory

The second reason for revising the Constitution stems from the number of sections which must be removed or replaced, a task that goes beyond simple consolidation.

In the above paragraphs, I mentioned lapsed or obsolete sections. These, however, are not the most awkward. Some others state principles that no longer fit Canadian reality. Only a few examples will be listed here, to which the reader may add critical arguments made by the authors of articles on special subjects in this collection.

1. The preamble of the 1867 Act refers to only 3 provinces expressing their wish to unite under the crown of the United Kingdom of Great Britain and Ireland with a constitution theoretically similar to that of the United Kingdom. It must be noted that Nova Scotia was not in agreement with the proposal for Union at the time of Confederation; that there are now 10 provinces; that the title of the 'sovereign' has been changed as a result of the independence of Ireland; and that the federal constitution of Canada cannot now or ever, in the opinion of all authorities and of simple common sense, be considered similar to the unitary constitution of Great Britain.

2. The same preamble goes on to say that such a union would increase the provinces' prosperity while promoting the interests of the British Empire. Now the Empire has broken up and has been replaced by the Commonwealth; British trade preference is no longer a factor; and the United Kingdom is attempting to enter the Common Market. There is no doubt that the text needs modification.

3. The preamble states next that the federal union is a result of British parliamentary authority. Now although this statement may have been technically true at the time, it is nevertheless in contradiction with the opening assertion that the Act was the result of the desires of the provinces themselves. This subjection of the provinces to the imperial power of the British Parliament must be abolished.

4. The preamble claims to be the foundation of federal legal authority and to define the nature of executive government. There again are two obviously undemocratic statements.

5. In a 1949 amendment, section 91 was revised at the sole request of the federal government so as to grant it the power to change the Canadian Constitution in what are considered federal matters. All the provinces were rightly critical of this amendment, and the federal government has committed itself to bringing it up again at federal-provincial conferences. This commitment saves me from having to elaborate on this point, but it clearly stresses the need for revamping the form.

6. Section 132, concerning treaties between the British Empire and foreign countries, purported to grant the Canadian Parliament and government all useful or necessary powers for fulfilling its obligations, or those of any of its provinces, as part of the Empire. Constitutional evolution has made this article inapplicable, although perhaps not as obsolete as in Mr. Ollivier's compilation.

7. Sections 55 and 56 state the right of the sovereign to disavow or to reserve royal consent to Canadian parliamentary acts. These two powers are now outdated.

8. Section 90 extends to the provinces the provisions regarding the voting of credits, royal assent and disallowance. There is no longer any reason for retaining this section in its present form.

9. The whole matter of appointing Lieutenant-Governors should be revised, including their nomination by the federal government, their remuneration, their functions, their subjection to the sovereign, etc.

10. Why should the Supreme Court justices continue to be appointed by the federal authority in this day and age?

In short, it is essential to remove from the Constitution any reference to Canada's imperial or colonial heritage, be it practised by reservation, actual or seeming subordination, alleged transfer of supremacy from London to Ottawa, or in any other way.

Lack of a "master plan" in doctrine and principles

In the third place, the Canadian Constitution lacks essential basic principles.

During the last 50 years, the world has experienced unprecedented constitutional activity. More than 100 countries have gained their independence, the right to external representation, and membership in the United Nations. At the same time, the general philosophy of the rights of man has grown richer in the preparation of various declarations. Of these, the one adopted in 1948 by the United Nations has inspired numerous national declarations.

The debates which accompanied the Canadian Parliament's adoption of a federal Bill of Rights amply revealed that only a joint declaration by the federal and provincial governments could achieve the desired result of creating a general atmosphere favouring human liberties. These are indivisible for all practical purposes because they pertain to each individual. However, the more they are affirmed, the more important looms the distribution of legislative powers to decide which governmental authority should have control over those areas where fundamental liberties must be limited for the public interest and the common good.

Basically, every constitution amounts to the assertion of fundamental rights, and it can be said that wherever these

rights are not protected, there is no constitution. Now the assertion that the British system of unwritten law protects them better than any other does not hold up under close scrutiny. It is in some very precise documents that English liberties are set down (Magna Carta, the Bill of Rights, royal declarations, statutes for secession to the throne, etc.); these were gradually won at the expense of the monarchy's absolutism. It is because it refused to adopt a similar attitude towards its American colonies that Britain lost them. And it was by granting the French Canadians the Quebec Act that it prevented their joining the American Revolution.

The greatest constitutional error would be to believe in the value of custom alone and in untrammelled judicial and parliamentary processes. On the contrary, a constitution, in all that concerns its inspiration, must be written and removed from all judicial and parliamentary authority. Parliament in certain cases may well help in writing the constitution, but it is only public agreement that gives the constitution its strength. This occurs either expressly, through a referendum or plebiscite, or implicitly, through popular consensus expressed either at the outset when public opinion demands a new constitution or by the participating states at the time of federation or in any other way.

It is not the responsibility of the judiciary to create the constitution, but only to interpret it. This it will do in two ways: first, it will have to define the meaning of the words used in technical provisions such as the division of

powers, subjects that must be so clearly expressed as to leave the least possible grounds for dispute, but that at the same time naturally change with the very evolution of language and of civilization. Second, by interpreting these provisions, the court states the law by extending the moral content of general principles. The legislature must respect this extension for the precise reason that, over and above the legislature, the people have wished to state principles which positive law should adhere to as closely as possible. It must, however, take into account the fact that circumstances change, and at the same time ensure that the individual rights of citizens, and the common weal do not suffer as a result of this same extension.

A contemporary writer, André Haurion, has defined constitutional law as the legal framework within which political phenomena occur, or as the peaceful coexistence of power and liberty. From whom does authority stem? how is it exercised? by whom? on whom? why and what are its limitations? That is the first question, and it should be asked in connection with those purely practical institutions which the constitution has elevated to the status of law.

A second question deals with legislative power. From whence does the constitution originate? How and by whom may it be changed when necessary? How and by whom will other internal laws be passed? The constitution's primary objective is to keep the legislative and executive powers separate, in order to avoid absolutism and to allow for the contingencies of everyday life.

A third series of provisions concerns the judiciary. Its function is to protect the liberties of individuals and of minority groups - the latter being simply a natural and necessary extension of the former.

In the Canadian Constitution, there is a striking lack of socio-philosophical content. In particular, the Constitution contains no statement concerning the balance between authority and liberty.

The fact that Canada is not the only country where this situation exists does not alter the fact that a sound constitution should prevent the widespread increase of power and the rise of the executive over the legislative and judicial branches. By assigning non-legal tasks to judges, by ignoring the judiciary in constitutional debates, or by discrediting it through poor nominations to the bench, we weaken the law, often without even realizing it. The big difference between an authoritarian and a democratic system is that, whereas "might is right" and lawful in the former, right and law make the latter "mighty".

The parliamentary system holds the constitutional means of restricting power and in this way it differs from the presidential system. No one would think of substituting the latter for a parliamentary system, since this last seems far more preferable. If this is the meaning to be drawn from an analogy between the Canadian and English systems, it would seem that no changes should be made in this respect. Nonetheless, we should not allow ourselves to be fooled by the ambiguities which camouflage absolutist tendencies within the Constitution: unlimited

spending power, control over the economy, the omnipresence of federal bureaucrats, international responsibilities, royal prerogatives etc. Nor should we ignore the fact that the parliamentary system itself has displayed operational weaknesses, thus accounting for the proposal that an ombudsman be appointed.

Basic requirements

If the Canadian Constitution is going to have a truly modern structure, and if the spirit it embodies is to be truly inspiring, it must at least contain a declaration of basic rights in which:

- (1) the broad lines of principle are expressed
- (2) the necessary limitations (to these rights) are clearly defined
- (3) individual rights are extended to all people without exception or distinction
- (4) the rights of groups are evaluated on the basis of the goals towards which they are striving
- (5) citizens' rights are preserved within the context of political institutions
- (6) freedom of conscience and of religion are inviolable
- (7) the rights of aliens in economic matters are delineated
- (8) pressure groups are kept under control by the state.

At the same time, every constitution should also be: autochthonal (i.e., it should be an outgrowth of the social

milieu it represents); autographic (i.e., it should be contained in a master document within the country itself); autonomous (i.e., it should contain its own formula for change); auto-dynamic (i.e., it should have institutions responsible for its interpretation and evolution); and didactic (i.e., it should teach the populace the basic values by which it should be motivated). The Canadian Constitution is none of these things, and that is why it is ignored, abandoned and derided. It will never be the object of respect, praise, learning, study, reknown, or honour unless, as a chief justice of the U. S. Supreme Court has said, "it embodies that grand design which we must strive to attain and shall attain if the Constitution becomes a permanent tool of government." Thus it is to be hoped that the current debates will be conducted on a plane high enough to fire the imagination of the Canadian people to the point where they become imbued with a profound belief in the values which will make this country great.

These constitutional considerations should be emphasized in Canada for another reason which we have already mentioned, namely: that the federal Constitution must provide the prototype for the provincial institutions. The desire to imitate Great Britain without enunciating our own principles seems to me ridiculous. By the same token, I believe that these principles must have universal value. In this way, we will secure the approval of thinkers elsewhere and perhaps, as a result, provide a source of inspiration for other peoples. If our principles are so based, the Canadian people will also assent to them, and

this in itself will serve to strengthen their regional loyalties as well as their national patriotism.

The ultimate establishment of federalism

Fourthly, our present Constitution sins against the only federalist concept which can ensure Canada's continued existence.

The constitutional make-up of the federalist system differs noticeably from that of unitary countries. A certain number of constant factors, which we have defined in Ten to One, account for this difference:

It may be for reasons of history, or because the component states have not developed at the same rhythm, or because there are divergences of economic interest on account of differences of climate, natural resources, or access to the sea. It may be that geography makes government difficult over vast distances, or because differences of language, race, and religion exist.

These four factors are noticeably present in Canada and entail as a direct result:

1. territorial groupings based on at least four natural, geographical divisions created by the Atlantic, Arctic and Pacific oceans, and the American border; Hudson Bay also creates a natural division, thus bringing the total to five or six large regions. Obviously, given the ten territories already in existence, any new arrangement would have to be accepted by all parties, rather than imposed on them. We at least ought to be able to discuss the possibility of such a regrouping. There is no reason to suppose that it would be less feasible than the 1949 entry of Newfoundland into the Dominion appeared to be,

when it was discussed in 1946. Here, however, we must also keep in mind that even if the present territorial divisions are maintained, we would still be able to use a regrouping scheme for specific purposes to be determined at a later date.

2. These territories would have to acquire some basic and residual powers which were erroneously granted to the federal government in 1867. For reasons of efficiency, and due to other factors previously mentioned, these powers would have to be removed from the federal government.

3. These territories would also have to be given certain powers perhaps not essential to their full development as territories, since one of these territories (namely, Quebec) cannot afford to forfeit them due to its cultural, judicial, linguistic and social characteristics. For example, property and civil rights would have to be given the broadest legal interpretation, and the provisions under those laws would have to be more specific than they have been in the past.

4. The federal government would have to continue to exercise jurisdiction over territories which are still in an embryonic state of development, and which are unable to govern themselves according to the parliamentary democratic system because of their thinly-spread population.

5. Certain measures would have to be adopted to accommodate an important cultural group which has both deeply-rooted historical significance and considerable importance as a concentrated segment of the population, since this group will not allow its development and mobility to be hampered by

territorial restrictions. With regard to this, the federal government should not be the only defender of minority rights in the provinces.

Rather, we should avoid that common error of federal systems which lies in the belief that the federal government should be the sole focal point of meetings, discussions, agreements and cooperation among the member states. Nothing could be more erroneous; yet nothing is more tempting when we are surrounded by the vestiges of imperialism. One is reminded of Napoleon's words: "Constitutions should be brief and obscure." Undoubtedly this is fine for any would-be dictator, but not otherwise. In reality, the member states in a federal system constitute, within their own respective territories, the direct and immediate civil authority. They are endowed with all the powers, rights and prerogatives necessary for dealing with all other governments, with the exception of those powers exclusively conferred on the federal government. All authorities agree on this point.

Consequently, the member states have the right, and often the duty, to deal directly with one another in matters falling under their jurisdiction. As an example, let us mention their collaboration in police and legal affairs, in carrying out sentences, in recognizing marriages and divorces, in processing wills, in the non-taxation of provincial companies, in dispensing with interprovincial customs duties, in collecting taxes levied on their residents, in exploiting joint water resources, etc.

Moreover, the same constituent members have exactly the same interests as the federal power in, for example, the initiative for changing the constitution itself; the referral of constitutional disputes to an ad hoc court; joint programs; tax equalization; administrative decentralization, and other matters of the same kind.

Here again, we are not touching on a whole group of questions that may be even more important, but which are the subject of special articles by other contributors to this collection.

Although the member states are essentially sovereign, although it is their common agreement that keeps the federal government operating, although the federal government may never undertake to amend the constitution without them, nonetheless, we must never forget that the federal government has the same needs as the provinces and the same rights to life, to autonomy, to external representation, to independent financing, to seeing that its actions and its specific fields are not infringed upon. There would never be any question of making the federal government depend upon the good will of the provincial governments. A federation must be the product of a permanent contract so that the federal and provincial governments give one another a mutual and reciprocal guarantee of existence, effectiveness and common fundamental beliefs. The paradox in the opposition of regional and federal loyalties is only an apparent one. They can, in fact, strengthen each other through mutual respect and influence, but they can also destroy each other in

refusing to know each other, and in claiming to substitute one's functions for the other's.

The need for organized coordination

These findings entail a need for organized coordination and collaboration, which has only been recently realized and whose first elements are found in certain federal initiatives, such as those of joint programs (if they are separated from inadmissible claims to financial and tax hegemony which have unfortunately accompanied them). Moreover there is in Canadian practice a whole series of traditions or solutions particularly relevant to the development of a general theory of federalism, if only agreement could be reached on institutionalizing them. This has been refused up to the present because of the prejudice in favour of federal predominance. I am thinking here particularly of Royal Commissions whose findings have lacked the authority that they might have had if each inquiry had been accompanied by a constitutional study or if the provinces had been invited to name members of these Commissions every time that an area of divided jurisdiction was involved. I am also thinking of the right to opt out which should have been made easier from the outset by administrative decentralization and not simply granted unwillingly on occasion. Furthermore there are joint bodies, and conditions of equality or equalization such as those used by the Canada Council for distributing certain grants.

Urgent need for a new constitution

The principle that should guide the drafters of a workable federal constitution is a clear division of powers

when this is possible. However when this is not possible or when the different member states are not dependent on the same imperatives or priorities, the principle should be joint responsibility with the right to opt out.

In other words this means that there should be a revision in the distribution of the exclusive powers set down in sections 91 and 92 of the present Constitution. It also means the establishment of a list of concurrent powers dealing with the raising and spending of taxes from which any province could opt out. For further information I refer the reader to Ten to One and to the joint institutions that it proposes. I only want to indicate that this conception of a federal constitution while retaining almost all of the present federal powers institutionalizes certain practices which have been adopted by Canadian governments. These seem to me, under proper conditions, to be quite superior legal formulas to what is found elsewhere, since they acknowledge both the principle of autonomy and participation. To demonstrate this would be to go beyond the scope of this article. Suffice it to say that only an entirely new constitution can achieve it.

The constitutional texts of certain countries are of very high quality on the various issues that I have raised. Germany, a federal state, has adopted a very interesting fundamental law. Italy, a unitary country with strong regional divisions, has written into its constitution the principle of decentralization. The Soviet Union, a federal country but with a strong centralist bias, grants to its constituent republics

a recognition of their cultural values not to be found in any text. Australia, a federal country, offers an original formula for financing its states. The Common Market, a federation in the making, establishes economic arrangements most of which are based on classical federalism, but certain others show interesting innovations.

The great advantage of a complete overhaul of the Constitution, therefore, consists of the examination of other constitutions. The information thus gained must be assimilated, remoulded and presented for the approval of the nation. If Canada does not soon make this effort at reflection and adaptation, it will not have been worthy of its past and will have seriously jeopardized its future.

The Concept Of Special Status -
Yesterday And Today

Jacques-Yvan Morin*

Now that a consensus is beginning to emerge in Quebec concerning our constitutional future, and special status is rallying increasing numbers of people looking for a rational solution to problems of coexistence for the two Canadas, certain persons in federal and English-Canadian circles declare that such a system would be "a leap into the unknown", since such a formula is unprecedented. It is a complicated solution, they say, and it would be difficult to apply in a country where, for the majority of citizens, the State is already too complex and tends towards the centralization of powers and fiscal policy.

These fears can be explained to some extent. For, although we now have a general idea of special status, we do not know the exact details, and opinions on this point still vary, even among the politicians and intellectuals who have helped to outline its main features. They all agree that this technique of government constitutes an exception to the principle of the equality or uniformity of the various groups which make a State, in this present case the Canadian provinces

* Mr. Morin is associate professor at the Faculty of Law of the University of Montreal.

within the Federation. In addition to the powers common to all these groups, one group would have more areas of jurisdiction or special rights. But what would be the scope of this system? To what extent would Quebec's status differ from that of the other provinces as the result of this inequality? And what would be the nature of the new relationship between Quebec and the central government? These are questions which still need official and specific answers. They will no doubt be forthcoming as public debate on the question unfolds and as the work of the Quebec Parliamentary Committee on the Constitution progresses in anticipation of the critical negotiations which lie ahead.

However, some of these apprehensions can hardly be justified and it is important to dispel them. Some people claim that Quebec is asking for "privileges" and a constitutional standing unequalled in any other country, and that the very idea of special status is a singular invention unknown to political science. This reasoning has been supplying federal circles with an added excuse for refusing all constitutional evolution. Thus, it must be shown that this argument is unfounded and that it stems partly from a scant knowledge of history, and of examples of special status throughout the world - and also from the fear of changes in certain institutions whose future however depends on the ability to adapt to new circumstances.

The Historic Role of Special Status

The history of most large States, from the Roman Empire to the Soviet Union, through the Ottoman and British

empires, shows us many applications of the technique of special status, in many forms and under various names, used to solve the problems of coexistence among peoples living within the same State. Roman history has many examples: each community preserved for a long time its traditional institutions and its own laws which were gradually influenced by Roman law; in the days of the Republic, provincial freedoms and autonomy were not the same as those of federated or free cities - and even under the Empire, despite the government's firm policy of centralization, certain provinces retained a distinct status.

Things could hardly be otherwise in such a variegated world, as was confirmed by the great political crisis of the third century which saw the emergence of several separatist groups; Rome realized that conquest alone proved insufficient to impose its institutions and that the variety of regimes was not necessarily incompatible with the harmony of the State. When this was forgotten during the days of the Lower Empire, the world was plunged into a sea of political lethargy which eventually contributed to the fall of the Roman Empire. It would seem that at the outset of its colonial expansion, Great Britain had not learned anything from Roman history which nonetheless held a place of honour in its schools. The set-back of its first empire, topped by the American War of Independence, was a direct consequence of Britain's refusal to respect the constitutional statuses and the autonomy of the thirteen colonies. That is why New France became the object of a more supple policy following the conquest - at least after the

Quebec Act (1774). This law gave the French subjects of Canada a somewhat limited (but nevertheless real) special status within the Empire, by re-establishing the Civil Code and authorizing freedom in the practice of the Catholic religion.

The Canadian Special Status

Later, however, when the Parliament of Lower Canada, formed in 1791, sought to obtain a democratic regime and broader self-government, which would have constituted a truly special status for the former French colony within the British Empire, the Imperial Government squashed this attempt in 1837. The reforms requested - particularly responsible government - were granted only after the union of Upper and Lower Canada which assured the domination of the Assembly by an English-speaking majority. Thus, Canada was granted a special status as was Nova Scotia - a status that did not exist anywhere else in the Empire. Little by little, responsible government became the cornerstone of the new British colonial policy: the Canadian status was extended to the other colonies, each benefitting from the advantages already acquired by the older ones. From the mid-19th century on, the whole evolution of the British Empire can be described as an ensemble of special statuses - each moving towards the equality of the Dominions at a different pace. Originally placed under the unlimited supremacy of the mother country, the colonial institutions became decentralized and diversified in order to adapt to the various geographic, ethnic, economic and social conditions, until the Imperial Conference of 1926 sanctioned equality of

status for the former white colonies.

British statesmen have since widely used the technique of special status not only in Asia and in Africa, where it contributed to the achievement of decolonization and the build-up of an association of States in which their influence remains important, but also within the United Kingdom itself where the Irish problem would have remained insoluble without the granting of particular status to Eire and Ulster. Quebec is the only place where constitutional evolution was blocked by the Durham Report (following the events of 1837-38), to be slightly broadened when the 1867 compromise made it an autonomous province and granted it its own legislature within a highly-centralized federation. Is it to be wondered, then, that within this historical perspective, Quebec's old, long-suppressed aspirations have come to the surface? The concept of special status has long been familiar to Quebec and should be just as familiar to the federal leaders who have themselves benefitted from it in the past.

Contemporary Examples

If history contains many examples of special status, contemporary states - unitarian as well as federal - also have had recourse to this technique of government. For the last half-century particularly, the complexity of relations between peoples - together with the development of democracy and human rights - has lent itself less and less to overly simple or rigid political structures. The ever-increasing state intervention in all aspects of socio-economic affairs coupled

with the need for centralization, has engendered the concomitant need to bring about a closer relation between the state and the individual. This is all the more so in states where two or more ethnic groups coexist or where the various components are geographically distant from one another.

First of all, many different types of special status have been devised in unitarian States, depending upon the degree of broadmindedness shown by the majorities, to meet the problems of minorities. The most obvious examples are the linguistic statuses enjoyed in regions of heavy concentration by the Swedes of Finland and the German-speaking Belgians. Along the same vein, we could also mention the special status based on international agreements, such as that of the Slovenes and the Italians of Trieste, or that of the Croats of Austria, but those are systems providing only very elementary protection (although many peoples are denied even this). Actually, the technique of the special status becomes fully significant only when it is associated with an autonomous system of government. This system can be either purely administrative or can include legislative power. As examples of the first case, we could mention the autonomous Hungarian Region in Rumania and Scotland's special status within Great Britain. Rumania's Magyar minority (8% of the population) is concentrated in Transylvania, in the very center of the country. In 1952, the constitution granted it, in nine districts grouped in one region, an elected Council and an Executive whose functions consisted in administering the region. Unfortunately, the Hungarian uprising in 1956 and its

suppression by the Soviet Union has had nefarious consequences for the Magyars of Transylvania: the Rumanian National Assembly modified the boundaries of the regions by eliminating two of its districts and substituting three Rumanian districts. The future of the minority still remains uncertain, but it would be more so if the concept of special status was totally discounted.

Scotland's Special Status

The best example of special administrative status is that of Scotland. When the union of Scotland and England took place in 1707, the Scots had lost their parliament but had obtained the retention of their own law and their own courts (a solution which was no doubt the inspiration for later dealings with Quebec). Towards the end of the 19th century, the excessive centralization of administration in London had become the source of a political uneasiness which could no longer be concealed. In 1885, the Parliament of Westminster finally approved the establishment of a Scottish Office whose responsibilities extended primarily to the administration of education and some areas in the commercial field. As years went by, the decentralization was very gradually extended to agriculture, health, hydro-electric development, etc. In 1951, the post of Minister for Scottish Affairs was created within the British Cabinet. The person holding this position serves as Deputy Secretary of State and is based in Edinburgh where the services of Scottish administration have been transferred. These departments are entirely independent from the corresponding central services and are subject to control by the Treasury

only. It is quite certain that London hopes that these arrangements will suffice to retain the essentially unitarian character of Great Britain, but if we are to believe the signatories of the "Scottish Covenant" of 1949, who are demanding an autonomous government similar to that of Ulster, the evolution of Scotland's special status has undoubtedly not come to an end.

The Case of the Slovaks

According to the 1960 Constitution, Czechoslovakia is "the unitarian State of two sister nations - the Czechs and the Slovaks". The Slovak minority's demands for autonomy are very old since they already existed when it was under Austro-Hungarian rule. However, the hostilities of the Second World War gave the Slovaks the opportunity to elect their own National Council whose Presidium and Commissariats began to appear as a truly autonomous government. After the War, Czechoslovakia assumed a clearly dual form, with the powers of government divided between Prague and Bratislava. However, when the Communist Party came into power - an event which found little favour among the Slovaks - the course of political evolution changed: even though the 1948 Constitution stated that the powers of the state in Slovakia were entrusted to Slovak national bodies, Prague controlled Slovakian administration and laws so tightly - particularly in the economic realm - that special status gradually lost all meaning.

There was a brief return to autonomy in 1956 after

Krushchev stated at the 20th Congress of the Communist Party that "not only does socialism not dissolve national characteristics, but on the contrary it ensures the universal development ... of all nations and all nationalities", but the plan's imperatives and "democratic centralizations", as well as the "backwardness of Slovakia", rapidly reduced these organisms to the latent state of "superfluous, intermediary bodies", sanctioned by the new Constitution of 1960. The system now revolves around "national committees", workers' organizations entrusted with the "power and administration of the State in regions, districts and the townships". However, this does not solve the Slovak question, although the centralized system has allowed this minority to achieve some marked material progress; it often happens, in fact, that a group in the process of development becomes more and more conscious of its national heritage. At the moment, the situation leaves an impression of uncertainty, but it could be that recent tendencies to decentralize favour a return to special status.

Italian Regionalism

The Italian experience has been more successful; here, the technique of special status has been used in a systematic manner following the collapse of Fascist centralization, although it cannot be stated that this country has found a definite balance between its tradition of centralization and the centrifugal forces to which it is subject. The 1948 Constitution established nineteen regions of which five have a "special status"

(Article 116). These five regions possess broader autonomy than that of the ordinary regions which, in fact, have not yet been established, seemingly because of the Roman authorities' fear of seeing the extreme left element take over the regional bodies.

Each region with special status has its own written constitutional system which defines the scope of its jurisdiction and which was adopted by the Italian Parliament and the Regional Council. Thus, Sicily enjoys a broader autonomy than the others, while the Valley of Aosta, whose majority is French-speaking, finds itself at the opposite end of the scale; between the two are located the statuses of Sardinia, Trentino-Alto-Adige and of Friuli. Among the powers common to all these regions, we find - in varying degrees - mines, industry and commerce, education and social legislation. The Sicilian region, whose status was drawn up as early as 1945, in addition to exercising broader powers, escaped the clause, contained in the other regional constitutions, to the effect that all regional powers must be exercised according to the fundamental principles of the state's legal system and its international commitments. Accordingly, one school of Italian legal writers is of the opinion that the Sicilian jurisdiction is really the only one that could be considered truly exclusive. Sicily would thus find itself in the position of being the only one among the Italian regions to be united to Italy by a federal bond.

The system of control established by statute to oversee the constitutionality of the laws could lead us to

believe that this bond is yet a looser one, because all cases must be brought before a special constitutional court made up on the basis of equal representation (members are nominated in equal number by the legislative assemblies of the State and of the Region). However, from the point of view of Rome, the jurisdiction of this court could only be provisional; with the creation of the Italian Constitutional Court, the central government refused to proceed with the nomination of new members to the special court so that Sicily then faced a *fait accompli*. But this is not the only difficulty special status has experienced at the hands of the Italian State, as a more complete account of the situation in Alto-Adige (south Tyrol) or in the Valley of Aosta would indicate; these areas are encountering strong pressure in favour of Italianization. Nevertheless, Italian regionalism holds considerable interest for all countries where groups of other ethnic background reside. Although this experience is not yet wholly conclusive, it shows marked progress when compared to pre-war centralization and could greatly help with economic planning and its requirements as to the participation of local governments.

The Status of the Faeroe Islands

The case of the Faeroe Islands, which are part of the Danish kingdom, is a most interesting one. Although we have here an officially unitary State, the bond which unites the two parts of the country is really of a federal nature. In 1948, a constitutional law granted legislative autonomy to this community, linguistically distinct from Denmark, "in

consideration of the particular position that the Faeroe Islands occupy within the kingdom from a national, historical and geographical point of view". While Copenhagen retains foreign affairs, defence, justice and postal services, the Thorshavn government exercises most of the other powers and may dispose of the territory's revenue. The Danish Government is represented by a High Commissioner and must submit all bills as well as treaties of interest to the Islands to the autonomous government for examination. Moreover, the law specifies that the local authorities may represent their own interest in negotiations with foreign countries with regard to commercial agreements and treaties concerning fishing. Faeroese nationality must be indicated on Danish passports.

Federal States

There is a principle which most federations recognize, that all member-States are on an equal footing where the extent of their autonomy is concerned; for instance, the United States Supreme Court has pointed this out many times. In federations with homogeneous ethnic backgrounds (or tending to homogeneity) governed by a very powerful central authority, equality acts as a precautionary measure to avoid too complicated State structures or jealousy among the members. However, it happens that some communities will insist on maintaining or obtaining certain powers of government as a condition of their adhesion to the federal union, while other members are denied these privileges or give them up of their

own accord.

The classical example of special status given to member-States of a federation is provided by the rights granted to Bavaria and Wurtemberg in the German Empire between 1871 and 1918. In principle, the power to conduct external relations was still under the jurisdiction of the Kaiser, but these member-States nevertheless continued to send their diplomatic representatives abroad to settle, by treaty, all matters pertinent to their own jurisdiction. Another characteristic of the system: Prussia, a member-State, had the right to block any constitutional revision and consequently any reduction of its own autonomy. Similarly, Bavaria, Baden and Wurtemberg possessed some jura singularia containing terms whereby certain powers could not be taken away from them without their prior consent. To be sure, these privileges were lost in the storm of the First World War, although the members of today's German Federation have retained the right to conclude certain treaties (a right which only three have exercised so far). This example, however, shows the degree of flexibility that judicial technique can adopt in order to conform to political reality.

The Soviet System

In the Soviet Union, the technique of special status has been the object of a systematic application, showing that its statesmen (as the regretted Professor Mouskhely, who cannot be accused of being pro-Soviet, freely recognized) had a pro-

found sense of reality and a political intelligence commensurate with the difficulties encountered. A multinational State if ever there was one, composed of national groups with from millions of people to just a few thousands, the old Russian Empire had never been easy to govern. Therefore the federalism that was established there was based on a pyramid of autonomous statuses, varying in scope according to the needs and the importance of the peoples involved.

At the lower level, there are ten autonomous Regions with as many national districts. They are, above all, administrative divisions corresponding to ethnic groups of little importance, but the autonomous Regions have "special rights" not enjoyed by the ordinary administrative regions of the U.S.S.R. They participate in the establishing of their own legal status within the federated republic to which they belong and have the right to decide on the language to be used in administration and in teaching.

At the intermediate level are the nineteen autonomous Republics which are part also of the federated Republics but which enjoy legislative and executive powers and are entitled to give themselves a constitution. They are very similar to the federated Republics, but their autonomy is more restricted and they do not hold the "sovereign rights" accorded the latter by the Soviet constitution.

Finally, at the top of the pyramid, are the fifteen federated Republics, member-States of the Union and enjoying a series of powers, which, if taken literally, would make of

the U.S.S.R. a confederation rather than a federation. For instance, the Republics can secede and maintain their own armies, according to sections 17 and 18 of the Constitution. Even taking into consideration the gap between rights and fact, this multilevel federalism is noteworthy in as much as it tends to adapt itself to the diversity of Soviet society. Professor Duverger has rightly said that, even if this system makes for very little equality and is less "logical" than some others, it is nevertheless more realistic; it has, in fact, been imitated by another socialist federation, Yugoslavia, where the Voyvodina province, in particular, constitutes an ethnic microcosm of central Europe which called for the attribution of a special status.

There is another article of the Soviet constitution which creates, in reality, a special status for the benefit of two federated Republics. In 1944, the member-States were authorized to establish direct relations with foreign states, to sign agreements with them and to proceed in the exchange of diplomatic and consular representatives. However, the Union reserves the right to establish the general guidelines governing the agreements with foreign countries. Furthermore, of the fifteen Republics, only the Ukraine and Byelorussia have been granted the right to participate in the United Nations and various international organizations and conventions. Thus, the international personality of these States remains very limited because of the control of the central Power over their activities, but it could, one day, take on a more concrete meaning; in the

meantime, it provides us with an outstanding example of constitutional flexibility.

Special Statutes in the Commonwealth

British constitutional practice in the post-war federations of the Commonwealth has been very flexible and many special statutes have been devised, in order to bring together territories which had achieved various stages of progress towards self-government or whose aspirations were greater than what could be conceded to the majority of the member-States. Statesmen are agreed that uniformity is preferable, but they have not hesitated to grant special autonomy when it was felt necessary. As many of the federating territories possessed within the Empire a status different from that of their neighbours, it was to be expected that they would not willingly relinquish to the central government of the new federations the degree of self-government which they had achieved. Therefore, special statutes became current practice, although kept to a minimum.

In India, as early as 1935, when federalism was introduced, the acceding princely States transferred to the central government only those powers which were specifically mentioned in the Instruments of Accession. These special statutes were reduced in time and the authority of New Delhi was made virtually uniform by the 1950 Constitution. But even today Jammu, Kashmir and Nagaland still enjoy special statutes within the Union. In Jammu and Kashmir, the list of concurrent powers is not applicable and the residual power

remains with the member-State. In Nagaland, since 1962, the application of certain federal laws depends upon approval by the State legislature.

It may be, though, that such lack of uniformity amounts to a hindrance, and yet it may be the price of federalism. If Jamaica, for instance, ultimately refused to enter the proposed West Indian Federation, it was largely due to the fact that its claim for greater legislative autonomy than that which was granted to the other islands, could not be met by the 1961 Constitutional Conference.

It is in the Federation of Malaysia that one finds, in our opinion, the clearest cases of special status, although the secession of Singapore has underlined recently the difficulties of inter-ethnic relationships and the fragility of the political balances they require. When the States of Borneo (Sarawak, Sabah) and Singapore were to join the Malay Federation, in 1963, all the parties concerned recognized the usefulness of this union, but the Malays feared the influence of the Chinese majority in Singapore, while the latter was not very inclined to give up the control of its economy in favour of the central government. Similarly, the States of Borneo were afraid of becoming part of an already highly centralized federation. Therefore, a compromise was reached, which took the form of special statuses for the three new member-States, inspired by the double federalism which had characterized the India Act of 1935.

The distribution of powers existing within the Malay

Federation was thus not automatically extended to Singapore, Sarawak and Sabah. Teaching, culture, industrial legislation, commercial companies, harbours and railways were left to them, while elsewhere they came totally or partially under central jurisdiction. Singapore also kept its own citizenship as well as its powers in matters of immigration and health; even in matters of customs, the central government was to consult a tariff commission nominated jointly by itself and the Singapore authorities. The powers retained by this member-State were of such importance that it accepted reduced representation within the central Lower House. No important constitutional modifications of the rights of the three States with special status can be effected without their agreement.

It seems that the economic and racial disparities between the Malay States and Singapore were too great for the compromise to be lasting. Right after the elections of 1964, it became apparent that the Malay politicians were too much afraid of the ideological and material influence of Singapore to give it a real place within the Federation; the secession of Singapore, in 1965, was in fact almost an eviction. Of this interesting experience, there remain today the special statuses of the Borneo States.

In Conclusion

Canada is not the only country, as one can see, where problems of coexistence among peoples and problems of organization of institutions exist. There is no region in the world today which is not faced with these difficulties and, indeed, it seems

that they will only increase, as the nations come to live more and more on top of each other. On the other hand, solutions are not lacking either, as shown by the variety of constitutional statuses that we have just described and to which should be added many other techniques of political union which would go beyond the scope of this article.

Certainly, none of the systems mentioned here, taken individually, can serve as a model to settle our problems; each provides the answer to social, ethnic, geographic and economic circumstances which are not ours and the case of Quebec is all the more particular since the great majority of the French-speaking population of Canada (83%) lives on its territory. It is enough, however, to note that the technique of special status, thanks to its flexibility, has rendered great services elsewhere and offers advantages not sufficiently known to statesmen, at least in Canada. It is the spirit of this system that we have wanted to emphasize and not the letter of its various applications. Simple, even "rustic" political structures, as Professor Reuter calls them, are no doubt preferable, but one cannot sacrifice to them indefinitely sociological and political realities. There are permanent problems, in this field, that cannot be suppressed and that reappear as long as a real equilibrium has not been reached.

The task facing the English-Canadian and French-Canadian elites during the coming years will be twofold. Firstly, while taking the existing institutions into consideration, they should not hesitate to show political

imagination in order to create, if necessary, a new system of government befitting the specific situation of the two Canadas. Secondly, they will have to convince public opinion in the provinces with an English-speaking majority that it is not in their interest to impose on Quebec their desire for unity nor, inversely, to try and obtain for themselves the status to which this province aspires.

Some will remark that the system which we may eventually adopt runs the risk of being complicated, especially with regard to the establishment of the central organs of the federation, but in this field there exist solutions which we will have to describe in a further article. More than a hundred years ago, Tocqueville remarked that democratic peoples spontaneously accept simple and general ideas and do not care for sophisticated systems. However, the world of tomorrow, if it is to be peaceful, between the States as within each of them, will require very complex political structures. It is up to us, here and now, to face this complexity and plan the future, so that, to quote Valéry, we will not approach it backwards.

The Birth and Development of the Idea of Special Status for Quebec

Jean-Charles Bonenfant *

The idea of special status for Quebec, within Canadian federalism, antedates the term itself. For a long time, it amounted only to a hesitant acceptance of facts, the theory of which was only formulated these last years. It was already contained in the Quebec Act by which, in 1774, the British Parliament accepted the survival in North America of a group of French Catholics; it was outlined in the unofficial federalism which developed under the Union; and, in 1867, it was written into some of the provisions of the British North America Act: sections 94 and 133; existence of an Upper House in Quebec; section 93 and paragraph 13 of section 92 granting the provinces powers in fields such as education and civil law, with the intention of satisfying Quebec.

Some men of those times became aware of this "special status" and, in February 1865, Christopher Dunkin stated that "the position afforded Lower Canada is different from that of the other provinces".¹ For a long time, Quebec, while revealing an autonomous stand, especially from 1937 to 1939 during the Rowell-Sirois inquiry, did not claim special status directly. It was only at the beginning of the fall of 1954 that it was asserted that "Quebec is a province unlike the others".

* Mr. Bonenfant is director-general of the Quebec Legislative Library.

These are the words which Gerard Filion used in an editorial of Le Devoir dated September 11, 1954 and printed after a speech made a few days before by the Prime Minister of Canada, Mr. Louis Saint-Laurent, on board the "Saxonia", in which he stated that nothing could slow down the influence of Ottawa. On September 18, speaking to the Quebec Reform Club, Mr. Saint-Laurent, while defending himself from being an advocate of centralism, declared that he did not share Mr. Filion's opinion and he added that "the province of Quebec can be a province like the others".²

The Prime Minister of Quebec, Mr. Duplessis, and his followers again took up this theme of a Quebec being unlike the others, a view that, in fact, had become stronger since 1947 when Quebec refused to conclude with Ottawa the fiscal agreements which gave generous grants to other provinces. Special status for Quebec was defined more precisely when, in 1954, the Legislative Assembly set up an income tax for which a partial abatement was granted on the federal tax. That same year, in a book dealing with Canadian duality, Michel Brunet wrote: "Journalists, historians and economists have recognized that in the Canadian federation the situation of Quebec was different from that of the other nine English provinces."³

The Tremblay Commission

In its report published in 1956, the Tremblay Royal Commission, set up to study constitutional problems, while not using the expression "special status" nevertheless outlined its theory under the title "Special Situation" in the chapter

dealing with the constitutional position of Quebec. After having shown that, to a certain point, "the constitutional situation of Quebec is not different from that of the other provinces", the report set forth "what makes the province distinct from the others within Confederation", explained that "the Act of Confederation creates in Quebec, an exceptional situation", and concluded that "Quebec not only finds herself in a special and distinct situation, but possesses also the sole authority to bring about any changes in that situation."⁴

Mr. Lesage

When Mr. Jean Lesage took power in Quebec in June 1960, one of his first moves was to provide representatives of the federal government, and those of the provinces, with copies of the Tremblay Commission Report appearing thus to adopt the ideas which it contained. Furthermore, most of the ensuing claims that he made were in the direction of special status. This was the case with the request not to adhere to joint federal-provincial programs, a right which the federal government recognized for all provinces, but a right of which only Quebec has taken advantage.

One of the first noisy claims for special status for Quebec was voiced in October 1963 by the Provincial Secretary, Mr. Bona Arsenault, when he asserted in Ottawa that "Canada will not solve the actual crisis unless it grants Quebec a special system within Confederation" and that it was "urgent to undertake a reform of the Canadian constitution that would lead

towards this goal, which is the only compromise acceptable to French Canadians between independence and the status quo."⁵

In May 1964, Mr. Lesage declared in Moncton that there was no need for Quebec to leave Confederation in order to obtain recognition of its distinctive status.⁶

Mr. Johnson

Mr. Daniel Johnson, as early as July 4, 1963, stated that "the setting up of a new constitution for Canada requires that Quebec be recognized as a province which is unlike the others" and he added that in order to recognize that fact, it was necessary to reject the false principle "that in a federal regime, all member states or all provinces should necessarily be shaped in the same constitutional mould, with the same rights, the same responsibilities and the same sources of revenues."⁷

Later, in the last chapter of his book Equality or Independence, Mr. Johnson wrote: "There are some who speak of special status for Quebec, being careful not to define what they mean by that expression. We have there, a very handy expression, which can mean almost anything...There are numerous examples of federations in which certain member states benefit from special status. But I know of no case which can be applied exactly to the Canadian situation. For this situation is unique."⁸

The Theoreticians

In June 1964, in Charlottetown, Professor Jacques-Yvan Morin formulated for the first time in a clear and detailed fashion

the theory of special status and concluded that in "the foreseeable future, the only regime which could reconcile, on the one hand, the Rowell-Sirois and Tremblay theses and, on the other hand, assure social progress, remains, in our opinion, the provision of special status for Quebec, within a new Confederation."⁹

During 1965, as the solution of special status became increasingly popular throughout the province, Professor Morin continued to be its spokesman. At a seminar organized by the Saint Jean-Baptiste Society of Montreal, he had as a supporter, among others, Reverend Father Richard Arès ¹⁰ who, in the June 1965 issue of l'Action Nationale, had published a paper under the title "Special status: vital minimum for Quebec" which he had delivered on April 25, 1965, at the "Journée de la Ligue d'Action Nationale."

Following the interventions of Professor Morin and Father Arès and several resumptions of the theme by Prime Minister Lesage during his trip to the west of Canada at the beginning of the fall, Mr. Claude Ryan devoted his editorial in Le Devoir (dated November 30, 1965) to "The Formula of Special Status". The editorial, favorable to the "theme which seems to enlist a wide agreement on the part of Quebec opinion" awakened the attention of English Canada. It prompted, in the Globe and Mail of December 11, an editorial that, under the title "A positive approach from Quebec", was far from rejecting the thesis of special status.

The Ste-Foy speech

But the most political proclamation of the necessity of special status for Quebec is to be found in a speech by Mr. Lesage which he delivered on December 14, 1965, to the Chamber of Commerce of Ste-Foy. "In order to answer the wishes of our people", declared Mr. Lesage, "we will seek to obtain all the powers necessary to insure our economic, social and political affirmation. That is a logical, wholesome and positive aim. To the extent that other provinces, for perfectly acceptable reasons, do not need to set themselves the same aim, and it seems that this will be the case ... Quebec in relation to these other provinces will see its status becoming increasingly different." Professor Donald Smiley claimed, with some exaggeration, in the February 14, 1966, issue of Le Devoir, that Mr. Lesage's speech, in Ste-Foy, in which he had endorsed the option of special status, "will possibly appear in the future an important turning point in the relations between Quebec and the rest of Canada."

A fashionable formula

Special status has since remained a fashionable formula sufficiently "flexible and varied" to satisfy those who want neither independence nor the status quo. In the memorandum which Prime Minister Johnson presented to the Tax Structure Meeting in September 1966, one finds nowhere the expression "special status", but it is difficult not to imagine it underlying the intention "of having the French-Canadian nation legally

and politically recognized by several means, among them, by the setting up of a new constitution which will recognize in our country equal collective rights for English-speaking and French-speaking Canadians and which will grant Quebec all the rights necessary to safeguard the Quebec identity." And so, Mr Ryan could write in the September 14, 1966, issue of Le Devoir: "Mr. Johnson's memorandum presented at the fiscal conference gives a concrete meaning to the idea of special status which came to light in Quebec several years ago."

Opponents

The idea of special status has found opposition in several sectors. The partisans of independence are opposed to it because for them, as Pierre Bourgault said to the students of the Saint-Thérèse Seminary, "the special status proposed by Mr. Lesage bestows on Quebec a provisional status and that 'special status' means paying twice as much to obtain the same thing."¹¹

As special status for Quebec can constitute a weakening of the federal tie, one can understand that when interviewed on television by journalist Pierre Berton, two federal Members of Parliament, Messrs. Pierre-Elliott Trudeau and Gérard Pelletier, stated that they didn't want for Quebec "too special a status".¹² Furthermore, Professor Smiley entitled one of the two articles which he published in Le Devoir (February 14, 15, 1966) "Rather than special status, which is a step towards separation, it would be better to integrate French Canada into the federal system."

In the Commons, in February 1966, two Members of Parliament, Messrs. C. W. Baldwin and Warren W. Allmand, opposed special status.¹³ Finally, in a letter which Le Devoir published on March 16, 1967, Dr. Eugene Forsey, while recognizing that "Quebec already possesses special status", added: "The special status advocated by Mr. Johnson and Mr. Lesage, if I understood them correctly, is inadmissible for those who want the rest of Canada to remain something more than a simple geographical expression."

The N.D.P.

Finally, the last chapter of the history of special status was the stand taken by the N.D.P. during its meeting in May, 1967. The Quebec N.D.P. endorsed the need for special status and attempted to have its point of view generally adopted by the party at its national convention in July.

The national leader of the Party, Mr. Douglas, declared that "to solve the serious problems of the hour, the Constitution must recognize that Quebec is a province unlike the others."¹⁴ A few days before, during a debate on the address in reply to the Speech from the Throne, Mr. Douglas proposed a sub-amendment in which the Government was reproached for not having organized a national conference on the Constitution with a view to providing a special appropriate status for Quebec. The sub-amendment was rejected, but a great deal of imagination is needed to interpret it as a rejection by the Commons of special status for Quebec.

The quest by Quebec for special status has been, during the last hundred years, the manifestation of an interplay of two principles well-known to theoreticians of federalism, the operation of which was analyzed by Professor Georges Scelle: the law of participation and the law of autonomy.¹⁵ In Quebec, where ethnic origins combine with geography and history to create particularisms, one experiences, as a result of the difficulties of full participation in federal activities, the need to seek at home a more autonomous expression of the power which special status implies.

FOOTNOTES

1. Debates on Confederation, 1865, p. 514.
2. Le Devoir, September 20, 1954.
3. Michel Brunet, Canadians et Canadiens, Fides, 1954, p.163.
4. Report of the Commission of Inquiry into Constitutional Problems, vol. 2, pp. 180-85.
5. Le Devoir, October 15, 1963.
6. Le Devoir, May 18, 1964.
7. Speech delivered at the Kiwanis Club of Quebec and summed up in L'Événement, July 5, 1963.
8. Daniel Johnson, Egalité ou Indépendance, Editions Renaissance, 1965.
9. P.-A. Crépeau and C.B. Macpherson, eds. The Future of Canadian federalism, Les Presses de l'Université de Montréal, 1965, p. 156.
10. Le Devoir, November 29, 1965.
11. Le Devoir, May 12, 1966.
12. Le Devoir, February 24, 1966.
13. Canada, Debates of the House of Commons, First Session, 27th Parliament, vol. II, pp. 1180-84.
14. Le Devoir, May 15, 1967.
15. G. Scelle, Manuel Élémentaire de Droit International Public, 1943, p. 194

The Possible Contents of Special Status for Quebec

Claude Ryan*

For several years, a lively constitutional debate has been carried on in Canada. Although some people consider this debate a waste of time and energy, the fact remains that changes in the Constitution are being widely discussed. It is in Quebec that the debate is most animated and radical. Where formerly constitutional debates were reserved for the experts, in Quebec they are now the object of public attention. Is it possible that the whole controversy is merely the result of a cleverly orchestrated piece of agitation on the part of a few visionaries? To ask the question is to answer it. What is happening is more serious than is generally supposed. Some of the highest authorities in the political sector and in other spheres of activity are questioning whether they should continue to accept a Constitution that is a hundred years old. Previously, this self-interrogation took the form of electoral protest and discussion. Since the 1960 renaissance, the discussion has completely changed direction. It now represents the desire of a people for freedom and a flourishing culture.

In the face of such a movement, one can cling to the

* Mr. Ryan is publisher and editor of Le Devoir. The title of this article in the original edition was "Québec in the Canada of Tomorrow".

status quo, as most of English Canada has done, in the hope that the storm will pass. Or, as Le Devoir has tried to do, one can adopt a positive attitude by admitting the existence of the movement, understanding the feelings behind it, and seeking the changes which could or should be made. Having tried constantly to keep abreast of new ideas here and elsewhere, we now wish to present these ideas to our readers before passing judgment on them. We have tried to determine whether ideas somewhat opposed to our own do, in fact, express that ever-elusive will of the majority in Quebec.

Constitutions are not immutable and sacrosanct. They exist to serve people. They are instruments rather than ends in themselves. In order to be relevant and vital, constitutions ought to be documents with which the people may identify, which express their aspirations and, as a result, which engender their spontaneous loyalty and respect. Some time ago we concluded that the present document, the British North America Act, does not fulfil these requirements. This supplement is intended to elucidate our arguments and, more important, is an attempt to clarify proposals for eventual revision.

It is impossible for us, of course, to present all the opinions we have published in the past or to prepare a new draft constitution. Our objectives are more modest:

1. To verify that our views on the necessity for constitutional revision stem from a genuine need;

2. To examine the possibility of revision which would revolve around the search for special status for Quebec within a renewed federal system.

In accordance with our policy, views opposed to those held by this paper appear in this collection. We have for the most part sought the collaboration of experts who are seeking a solution through dialogue rather than through maintenance of the status quo or through outright separation. The reader may draw his own conclusions on the basis of the material presented. We will merely state some of the guidelines which might aid in the search for a Canadian federalism that is more in line with contemporary reality.

The present Constitution has had its day

The mere survival of the B.N.A. Act over the last century is a tribute to the practical wisdom of its authors and subsequent interpreters. However, grave injustices were committed in its name against the French-Canadian population especially outside Quebec. Often, the B.N.A. Act also served the ends of centralist forces in threatening the basic institutions of French Canada. Nevertheless, it has permitted Canada to enjoy a century of relative peace and considerable progress. These are facts which it would be a mistake to overlook.

In spite of this, the fact remains that the Constitution is so tainted with weaknesses that render it obsolete, is so ambiguous and so ineffectual, that it could not be corrected by minor alterations. It is the document as a

whole and the general inspiration of the text which must form the basis of a new constitution.

Here, we will simply give a brief outline of the most important changes, as seen in the accompanying articles by Richard Arès, Marcel Faribault, and Andrew Brewin:

1. Where it refers to the division of powers, the present text is ambiguous. It says nothing of activities which did not exist in 1867. In addition, it contains very general clauses which usually favour the central government and which may be interpreted to the detriment of the legitimate interests of the member provinces.
2. By its tone, the present text reflects the colonial period in which it was written. It is full of references to the British Empire and other entities which have no meaning today.
3. The present text lacks certain elements which are essential to a truly autonomous and complete constitution. It contains no provision for constitutional amendment and no satisfactory mechanism for arbitrating constitutional disputes.
4. The present text does not lend itself to bringing together English-Canadian nationalism, which tends to polarize around a desire for a strong central government, with French-Canadian nationalism which, without wishing to be cut off from the rest of Canada, will, at least in the near future, be more Quebec-oriented. Within the present system, English-Canadians think French-Canadians are uncooperative, while French-Canadians think of English-Canadians as inveterate centralists. The result is tension between the two 'isms' mixed with confrontations and never-ending quarrels over procedure and laws. All of this impedes action. Many projects are set aside, are postponed indefinitely, or are undertaken despite opposition from one of the two groups.
5. The fundamental intention of the text has remained ambiguous. Did the Fathers of Confederation wish to create a true association between two peoples who were considered equal at the outset? Or did they think of creating a

"new nation" which would permit no more than the continuance, within a territory called Quebec, of certain religious, cultural and linguistic particularities? Neither the B.N.A. Act nor history holds the answer. The historian Creighton has flatly contradicted anyone who thinks that the problem has been resolved. The Anglo-Canadian history specialist on Confederation has rivals in Quebec who have reached similar conclusions to his but by very different routes.

The opinions presented in this collection are proof of the feeling among French-Canadians that the present constitutional text is unsatisfactory. An increasing number of English-Canadians are becoming aware of the need for change though the majority would most probably be satisfied with the status quo. To them we can only repeat - for the thousandth time: listen to the other point of view in the hope that the chance of a new dialogue will not be lost by your refusals and indifference. You have asked for several years: What is it that Quebec wants? What is it that French Canada is asking for? The first thing that we ask is that you recognize with us the existence of problems which arise from the present constitutional confusion. We do not ask that you accept from the start all that we suggest. We are prepared for vigorous and detailed negotiations. All we wish is that you recognize the facts from the beginning.

Quebec in a New Canadian System

The failure of the Fulton-Favreau formula proved once again that Quebec is the Gordian knot in the Canadian question. Had it not been for Quebec, the formula would have become law. The rest of Canada would have welcomed this as a

definite sign of progress. Similarly, in the major constitutional conflicts of recent years, the protagonists have been Quebec and the central government. Evidence would show that other provinces were frequently involved in constitutional conflicts with the central government; however, the conflicts involving Quebec were the ones which gave rise to the most serious political problems.

Since 1867, Quebec has occupied a special place in the Canadian federation. Rather than diminishing, this status has become increasingly confirmed. Before 1960, Quebec took a defensive attitude to discussions of constitutional matters. The attitude of the "quiet revolution", on the other hand, is decidedly one of dynamic affirmation.

Some people have concluded that Quebec is moving inexorably towards separatism or a vague confederalism which, for all practical purposes, would give it complete sovereignty. We are not of this opinion, but think it desirable and possible, for at least one or two generations, to maintain a federal system in Canada on condition that such a system ensures by law and in practice a distinct position to Quebec by granting it "special status".

Thousands of English-Canadians shudder at the thought of "special status". This concept, as the Smiley and J-Y Morin articles point out, has nothing heretical about it, nor does it entail anything that is really new. The germ of the idea exists in the B.N.A. Act not only insofar as Quebec is

concerned but also insofar as other provinces are concerned. The concept of special status has been tried repeatedly in both unitary and federal systems. It does not necessarily imply privileges or special favours as one is too easily led to believe, but rather it entails realistic recognition of diversities which are so pronounced that they are incompatible within a system that aims at uniformity.

Concrete Forms of Special Status

A discussion of the principles of special status would not be of much use. It is better to show illustrations of such status for Quebec. Here are several suggestions which could form the basis of further research:

1. In the preamble of a new constitution one would have to state clearly that Canadian political society is founded on the principle of cultural duality. If this duality is to become meaningful, special responsibility for the "distinct society" will fall on the government of Quebec. Means must also be found to write into the constitutional text the major observation of the Dunton-Laurendeau Commission - that is, that there exists in Canada two "distinct societies" one of which is mainly centred in Quebec. Cultural duality in Canada is a noble ideal worthy of the most generous efforts. However, if Quebec is not made the focal point of our second culture, there is no chance of achieving this ideal. History has proven this amply.
2. We would be inclined to leave the central government nearly all the precise powers that it exercises now by virtue of Section 91 of the B.N.A. Act. However, to this general provision, we would add precise clauses concerning the recognition of the wider latitude that Quebec must enjoy. Here are concrete examples:
 - A. In Quebec's case, one would have to foresee the possibility of delegation of powers which could be effectuated without modifying the

constitutional text each time. Articles in this supplement deal with the sharing of costs and responsibilities in sectors such as the placement of labour, agricultural credit, detention, rehabilitation work for delinquents and police services. Without making this a question of absolute principle, we are of the opinion that nothing should stand in the way of such services being guaranteed to Quebecers by the Quebec government for obvious social and cultural reasons. In an eventual constitutional amendment formula, given Quebec's special status, provision would have to be made for the possibility of such transfers. This was the most serious omission of the Fulton-Favreau formula.

- B. For matters of a social or cultural nature which were not assigned exclusively to one or the other levels of government in 1867, there must be the possibility of either national solutions or the right of Quebec to declare its prerogatives and, as a result, withdraw from federal programs in exchange for fiscal compensation. In this category we would include the following matters:
 - (a) family allowances;
 - (b) old age pensions and the Canada pension plan;
 - (c) social welfare and assistance;
 - (d) housing;
 - (e) scholarships and bursaries to students;
 - (f) financial institutions, insurance and trust companies, commercial societies, with the exception of the banks and the other institutions which would be especially entrusted to Ottawa's care;
 - (g) regional and urban development;
 - (h) scientific research in the universities.
- C. In sectors which have traditionally fallen within the jurisdiction of the federal government, certain legal interpretations that,

until now have been too rigid would have to be revised, and the need must be recognized for a new division of responsibilities that would take into account legitimate aspirations - notably those of Quebec. Can one, in 1967, continue to argue that Ottawa ought to have exclusive and complete power in international relations, broadcasting and immigration? Already, the courts have undertaken to define limits on its jurisdiction in these areas. Reasonable and thorough consideration of each of these areas of jurisdiction should give rise to fresh distinctions more in line with life in 1967. Since Quebec has jurisdiction over education and social security, and the development of French culture in Quebec, why should it not have the right to create the international ties necessary to the full and intelligent exercise of these powers? How can it be argued that Quebec should entrust Ottawa with exclusive control over radio and television in the province? If Quebec is largely responsible for French cultural development within the province, is it even conceivable that the federal government be allowed to exercise full authority over immigration?

The three areas of federal power which are questioned have, because of the ambiguous terms under which they were laid down, been used to the advantage of the central government. All of them merit more careful scrutiny.

3. In certain areas the British North America Act must frankly be altered. Substitutions must be made for sections which have become obsolete or ambiguous so that the new terms take Quebec's particular position into account. In this respect, here are some examples:
 - A. Jurisdiction should be given to Quebec over matters such as marriage and divorce which are intimately connected with property and civil rights.
 - B. The organization of the courts should be revised to encourage more uniform development of the Civil Law and to give Quebec more clearly defined guarantees in matters of arbitration, particularly those concerning constitutional questions.

- C. Quebec's right to have its own language policy should be more clearly established in the same way as exists in the other provinces. By this we do not mean to advocate unilingualism, a concept to which we do not personally subscribe. We will, however, use all our energy to protest against a constitution which entrusts French-language rights to the other provinces, but shackles Quebec with English-language guarantees.
 - D. In the present constitution, the central government possesses several very general powers, notably: taxation, the right to make laws for peace, order and good government in Canada, the power to act in the national interest, and the residual power. Ottawa's interpretation of these powers has created discontent in Quebec on many occasions. The central government often used its interpretation as an excuse for interfering in areas of provincial jurisdiction - at least in Quebec's case. A new constitution should define more rigidly the contents and the exact limits of these general powers. It should also be specified that Quebec has the power to disassociate itself without being penalized by Ottawa financially or otherwise. Quebec would be free to take this step except in grave situations such as a state of war or rebellion within the country. In case of a constitutional dispute, only a constitutional tribunal that had been accepted by all parties should have the authority to decide the case.
 - E. Finally, a constitutional discussion would provide a chance to examine completely the role and the composition of the Canadian Senate which, in its present form, hardly corresponds to the requirements of wholesome federalism.
4. As to the implications that the concept of special status would have for economic policy, particularly monetary and fiscal policy, Quebec should be allowed to exercise its jurisdiction without undergoing loss of revenue - in other words, receive appropriate fiscal compensations by right. It should also be a rule in a normal federal system that each level of government should have direct access to the sources of revenue that it needs to fulfil its responsibilities properly.

Having established this, one must recognize that until further inquiry has been made, a minimum number of essential powers must be left with the federal power. Without these, it could not influence, as it must, general economic trends.

The articles by Otto Thur and Robert Bourassa suggest a prudent and realistic approach in that respect. For the moment, we will simply present some considerations in line with their thinking:

1. We must undertake studies which consider in detail the relation of the Quebec economy with that of the rest of Canada, the United States, and other countries. We lack specific facts on this subject and our discussions end in ambiguity shortly after they begin.
2. We must accept the fact that a limit should be set on the proportion of direct taxes that Ottawa can give up to the provinces. According to certain experts, this limit could vary from 50 to 80 per cent. In practice, it could not reasonably fall below 35 or 40 per cent. The role of direct taxes is too closely interconnected with general economic progress and growth to eliminate justifiably from this field of taxation the government which has the general responsibility of ensuring a balanced economy. In any case, there is no reason why the proportion should be identical

for all provinces. It could remain about 40 per cent for the other provinces and be lower for Quebec so that the latter could fulfil the special responsibilities we have mentioned above. In any case, the deciding factor must be the provision of a federal intervention mechanism so that the central government retains its influence over the economy. Mr. Sharp's experience in 1965 with the 10 per cent tax reduction provides a very useful illustration of this point.

3. Apart from direct taxation, an important transfer of resources could also be achieved through indirect taxation, particularly through the federal sales tax and certain other taxes, e.g., on tobacco and alcohol. The idea has already been put forward repeatedly by Robert Bourassa, a contributor to this collection. It has also been taken up by the Advisory Committee on Confederation established by the Ontario government. On this subject, one would find it well worthwhile to refer to a study contained in the second volume of Background Papers and Reports prepared on behalf of the Robarts' government.*

* Report of the Economic and Fiscal Sub-Committee, article O-1. (ed.)

4. On matters which concern monetary policy and foreign commerce, Ottawa should retain prime responsibility and have the powers to fulfil it as befits a sovereign government. Increasingly, frequent consultations will have to take place with the provinces. Besides, one cannot rely too completely on the effectiveness of provincial representation on federal decision-making bodies.
5. Centralists must realize, after all, that four-fifths of public investment expenditure in Canada will be, from now on, the responsibility of the provincial and municipal authorities; also, more than half of the public revenue will be raised in the future by these same authorities. These facts are proof that economic policy cannot be thought of as the exclusive responsibility of the central government.

Today, economic policy is the essence of government action at all levels. Surely we must define the aspects of this policy that ought to stem primarily from one authority or the other. An attempt to confer the exclusive responsibility of all economic policy on any one level of government would be to deny the premise on which federalism and the division of powers are based.

Two Important Questions

In discussions about special status, two objections

are often raised:

1. How could Quebec provide completely different services within its boundaries while participating in national equalization programs?
2. How could Quebec participate fully in the decisions of the federal Parliament if such decisions apply only to the other provinces after Quebec withdraws?

For the first question, we have often suggested a double answer. First, particularly in the field of social security, Quebec ought to offer its citizens a whole scheme of services which could differ appreciably from national schemes in the method of implementation, but would be of a standard equivalent to those available throughout the rest of Canada. More specifically, it should devote a fair portion of its total revenue to social security expenditures to match the standard in the rest of Canada - taking into account, of course, differences in the level of employment, education and economic development.

If Quebec's politicians, under the pretext of false progressivism, offer social security programs at a level much superior to those of the rest of the country, the province will have difficulty claiming its share of equalization benefits. The protection of the citizen, in this case, takes precedence over the affirmation of national values. The essential condition on which Quebec's distinctive position rests is that the province provide the same protection to its citizens at a rate equivalent to that available in other parts of Canada.

Second, in anticipation of the day when Quebec will

be among the most developed provinces, it ought to assume the responsibility of its share of equalization payments now made to the less favoured provinces.

These provisions are basic and should be written into a new constitution, probably under fundamental rights.

It is not very difficult to answer the second question satisfactorily. The fact is that Quebec would not, at any time, receive special favour. It would have the right to receive compensation for the plans which it undertakes itself and which the other provinces prefer to entrust to Ottawa. It would have a right to its share of equalization payments. It would have to tax itself more heavily for projects that it alone feels are essential. We do not see how Quebec's representatives to the Commons could be embarrassed by the kind of special status that we envisage. In view of these considerations, if, for example, Ottawa decided to modify the Canada pension plan, any modification would inevitably have repercussions on Quebec's social security system. Similarly, any change in the equilibrium of federal expenditures would have definite effect on the equilibrium of the Quebec economy.

Because of these effects, and even more because of politics, we do not see the need for concern over the role of Quebec's representatives to Ottawa when one is considering a more clearly defined special status for the province. As we see it, it is logical that Ottawa should retain the bulk of its present powers, and that it should continue to play a very important role in international affairs, defence, economic

policy, etc. Frankly, the arguments used in all sincerity by men like Donald Smiley and Alvin Hamilton do not stand up to analysis.

Where Are the Vehicles of Reform to be Found?

We speak of constitutional revision as if it were to take place in the very near future. In fact, one should not be too optimistic. In English Canada, a general preference for the status quo will work against the idea of change. In French Canada, certain divisions which have always harmed us will continue to do so and will facilitate the maintenance of the status quo.

In English Canada, only those groups which are not now in power will militantly support change. The leaders of the Liberal Party, and the upper echelons of the federal civil service favour pragmatic evolution rather than fundamental revision. The Conservative Party will not have a policy on this subject as long as it cannot resolve its leadership problem.* The English-speaking press, the business world, the bourgeois elite, and the labour movement in the provinces other than Quebec are almost all in favour of the status quo. There are, however, two main elements in English Canada which may serve to promote research into a new system: the New Democratic Party and a growing number of intellectuals in the universities. It would, perhaps, be well to add to these the political leaders of several English-speaking provinces; but,

* This article was, of course, written before the Conservative leadership convention. (ed.)

in the light of recent statements, one is led to question whether a man like Mr. Robarts will not be as conservative in these matters as are the present Ottawa leaders.

On the French-Canadian side, one cannot anticipate our Liberal representatives in Ottawa taking a stand which is at all specific. Left to their own devices, a high proportion of representatives in the Quebec Liberal caucus would gladly study the means of achieving a new status for Quebec. But they are not free to say publicly what they think. Their English-speaking leaders have placed them under the authority of Mr. Trudeau, a man whom it is unlikely they would have chosen themselves. Whatever may be their personal opinions, it is quite understandably in their best interests to act as if they shared the views of the new orthodoxy which rules Ottawa. They were looking for leadership on this subject from a man like Mr. Marchand. The latter, however, instead of setting out a clear line of reasoning seems to go out of his way to establish, in public, the fact that he has not worked out a policy, by attacking a couple of times each week, strawmen that even an editorial writer starved for material would not dare resort to more than once a month.

Within the next few months, there will surely be interesting initiatives shown in the private sector as, for example, the meeting of the Estates-General at which hundreds of French Canadians will participate without soliciting Mr. Trudeau's good wishes. However, the main impetus ought to

come from Quebec, in other words from the Quebec Legislature. After the promising beginnings of three or four years ago, the Legislative Assembly has procrastinated on constitutional matters. It is time, for its own sake, that it stop putting off till tomorrow matters which are obviously of great urgency. It is time that it appraise Quebec's expectations, that it define them as concrete proposals in order to provide the basis for serious negotiations with the rest of the country. One can only hope that the two major parties of Quebec will reach some understanding as soon as possible, so as to get the problem out of the political thicket. If all that Mr. Johnson and Mr. Lesage have been saying over the last few years was sincere, there could be no other outcome.

Two Possible Paths to Equality for French Canada

Donald Smiley*

To an outsider, it seems that contemporary constitutional thought in French Canada can be divided sharply into two broad categories with the line of demarcation being whether or not it is desirable to work toward a situation where there is explicit constitutional recognition of the cultural particularity of Quebec. I shall designate these approaches as "federalist" and statut particulier respectively. In doing so, I run the risk of overlooking profound differences, particularly among those in the latter category which includes such divergent alternatives as those proposed by Jean-Marc Léger, Claude Ryan, Father Arès, Jacques-Yvan Morin, the Saint Jean-Baptiste Society of Montreal, and La Fédération des Jeunes Chambres du Canada Français. But it does seem to me that the most significant distinction in French-Canadian constitutional thought is between (a) those solutions whose essential element is a significantly different distribution of powers between the authorities whose jurisdiction encompasses all of Canada and the Legislature of Quebec than that prevailing between these former authorities and the provinces with English-speaking majorities, and (b) solutions which propose a relatively uniform federal-provincial delineation throughout Canada.

* Mr. Smiley is a professor of political science at the University of British Columbia.

One proposal coming from Quebec does not fit either category - that of Dean Philippe Garigue who, in his L'Option Politique du Canada Francais in 1963, proposed a complete reorganization of the structures of the central government on bi-national lines so that English and French Canadians could participate in them as such wherever they lived in the country. The "federalist" alternative has been vigorously defended by the so-called "new guard" Liberals from Quebec in the House of Commons. Three of these men have presented this alternative with somewhat different emphasis in each case.

1. For more than a decade Pierre-Elliott Trudeau has called for a more explicit delineation of legislative powers between Parliament and the provinces. Although many in Quebec seem now to regard him as an inveterate centralist, Trudeau, in the 1950's and later, was forcefully arguing against the involvement of Ottawa in matters within the legislative jurisdiction of the provinces through the exercise of the federal spending powers. In recent years he has called for a linguistic bill of rights giving constitutional recognition to the two official languages throughout Canada. Thus, more than some of his other "new guard" colleagues, Trudeau has emphasized the necessity of more effective constitutional protection of French-Canadian rights and privileges, and in his new role of Minister of Justice one would expect him to seek whatever agreement is possible between the federal and provincial governments on a more explicit definition of their respective powers. Trudeau has

also been the most forthright critic from Quebec of proposals for a statut particulier.

2. In his address to L'Institut Canadien des Affaires Publiques in 1964, Jean-Luc Pépin presented the most systematic defence of the theory and practice of cooperative federalism that has ever been made. Interestingly, Pepin at that time believed that through the evolving procedures of federal-provincial collaboration a de facto recognition of a statut particulier could be attained, a recognition that in Canada as such French-Canadians were a minority "pas comme les autres" and that among the provinces Quebec was "pas comme les autres". He had little faith in the immediate necessity or desirability of legal or constitutional redefinition and asserted "une étude du fédéralisme canadien révèle que les circonstances expliquent la formulation originelle ainsi que les transformations qui suivirent; que l'interprétation judiciaire, la convention constitutionnelle, la législation ordinaire et, rarement, l'amendement formel ont été utilisés dans le passé pour légaliser les transformations" (emphasis the author's).

3. Maurice Sauvé has argued more eloquently and in more detail than any other prominent Quebec Liberal for what might be called the "bilingual and bicultural package". By this "package" I mean attempts to resolve the relations between the "two founding races" by enhancing the position of the French language and culture outside Quebec. In a speech to the Montreal Chamber of Commerce in October 1966 (reprinted in part in Le Devoir, Novembre 3), Sauvé made ten specific proposals for the

attainment of his version of equal partnership including the extension of bilingual competence in the federal public service and crown agencies, a new national capital district, better career opportunities for French-speaking Canadians in the federal government and private business institutions, the extension of French-language broadcasting facilities throughout Canada and the opportunity for French-speaking minorities anywhere in the country to have non-confessional schools in that language.

Although the "new guard" Liberals in Ottawa differ in approach and emphasis, there seems a broad measure of agreement among them that a resolution of the present crisis must be sought largely in terms of a more effective recognition of the French language and culture on a Canada-wide basis, that a preoccupation with the "national question" is frustrating the pursuit of more concrete and attainable social and economic objectives, and that constitutional development should take place within a framework where the distribution of powers between Ottawa and all the provinces is relatively uniform.

It is interesting in the present context that the federal authorities are now in the process of liquidating one kind of statut particulier for Quebec which developed from 1963 onward, or perhaps more accurately, which had its origins in the agreement on university finance concluded by the federal and Quebec governments in 1960. Through the operation of the university agreement and the federal contracting-out

legislation of 1964, both the rates of federal income tax and the extent of federal responsibilities have come to be significantly different in Quebec than elsewhere in Canada. It is important to note that under the federal statutes related to these matters the options accepted only by Quebec were equally available to all the provinces. The proposals made by Ottawa to the two Federal-Provincial Conferences in the fall of 1966 provide for a withdrawal of direct federal involvement in most matters within the explicit jurisdiction of the provinces with interprovincial fiscal equalization of a magnitude never before seriously contemplated by a Canadian federal administration. This master-solution will, when effected, go a very long way toward restoring the uniformity between federal income tax rates and the scope of federal responsibilities in Quebec and that prevailing elsewhere in Canada. The new arrangements leave untouched, however, three programs administered by the Quebec Government which in the other provinces are carried out by the federal authorities - programs related to youth allowances, to government-guaranteed loans, to university students and to public contributory retirement pensions.

On the legal-constitutional side, the notion of a special status for individual provinces or groups of provinces is in harmony with the traditions of Canadian thought and practice. The legal equality of states is one of the most essential features of the Constitution of the United States.

The Canadian experience is quite different. Several statuts particuliers were created when areas entered Confederation as provinces after 1867 - the Prairie provinces did not have control of their natural resources until 1930, the federal authorities are permanently committed to maintaining certain communication and transportation facilities between P.E.I. and the Canadian mainland and the provisions of the federal enactment admitting Newfoundland in 1949 contain different procedures for protecting the educational rights of denominational minorities than apply to other provinces. Various arrangements relating to federal statutory subsidies to the provinces contain differential treatment. Many students of the Canadian constitution - and those governments who agreed on the Fulton-Favreau formula - have believed in the desirability of a constitutional procedure for the inter-delegation of powers between Parliament and the provinces which, when used, would result in a different distribution of powers in various parts of the country. Most importantly, the British North America Act of 1867 recognized that in significant ways Quebec was not to be a province "comme les autres" by provisions relating to the equality of English and French in the Quebec Legislature and courts, the protection of the representation of established English-speaking communities in the province, in the federal Parliament, and the Quebec Legislature, and the exemption of Quebec from the provisions of Section 94

which contemplated an early assimilation of the laws relating to Property and Civil Rights into a uniform code.

The general notion of a special status for particular regions accords also with the constitutional practices in other modern federations. The Indian Constitution of 1947 provides for three categories of states with each "Schedule" having different powers and responsibilities and different relations with the central government. In the Federation of Malaysia prior to 1965 in the United States and in the Federal Republic of Germany, there have been statuts particuliers for Singapore, Puerto Rico and West Berlin respectively. Many other examples could be given. Thus, on the basis of experience in Canada and elsewhere, it is indefensible to argue as do Marcel Faribault and Robert M. Fowler, on the basis of a doctrinaire adherence to the alleged logic of federalism, that "There is no place in a truly federal system for different classes of regional governments or a special status for any one of them. They must all have the same constitutional powers and jurisdiction."

The practical case against statut particulier is that, if Quebec is to have a range of autonomy significantly more extensive than that of the provinces with English-speaking majorities, it can expect less than a proportionate influence in the affairs of the federal government. So far as I have been able to discover, none of the statut particulier proposals

face this circumstance squarely. Surely Quebec M.P.'s and Senators - English- and French-speaking alike - will be precluded from influencing issues which are, under these proposals, to be within the jurisdiction of the Quebec authorities. Surely no Quebec politician will be able to aspire to a portfolio in a department which has crucial responsibilities elsewhere in Canada but few or none in Quebec. Surely it is unreasonable to contemplate increasing the bilingual competence of the federal public service under circumstances where federal powers in respect to Quebec are few and tangential. Some of us have been arguing that an effective adjustment to the new circumstances of cultural dualism requires an enhanced influence for French-speaking Canadians in the affairs of the federal government, and in particular of those French Canadians who represent the currents of thought and policy now dominant in Quebec. The adoption of statut particulier would almost inevitably work in the other direction.

Fortunately, workable political arrangements do not need to conform to the logic of the constitutionalist. Thus, statut particulier for Quebec need not be an all-or-nothing matter. Even within a uniform distribution of legislative powers between Parliament and all the provinces, Quebec may choose to exercise its jurisdiction much more aggressively than do the other provincial administrations, as has been the case in respect to contributory old age security programs, and

thus assume a de facto special status. One might expect similar developments in respect to immigration and external cultural relations. But there may be specific matters where more explicit constitutional recognition of the circumstance that Quebec is not a province "comme les autres" is both feasible and desirable and can be achieved without undue disruptions in the working of federal institutions. I would judge that one of those matters is post-secondary education. While, as a watcher on a day-to-day basis of the antics of W.A.C. Bennett, I am often amused to be told by some Quebecer that the provinces other than Quebec are "incurably centralist", this claim may have some truth so far as higher education is concerned. The complex federal proposal submitted to the Federal-Provincial Conference in October 1966 aims at a uniform federal role in respect to this field of public activity throughout Canada. It seems likely that after the provinces and their respective universities come to build into their budgets the vastly increased amount of federal funds available under this proposal there will be renewed conflict about the appropriate role of the central authorities. Under such circumstances it may be that some form of statut particulier should be sought, perhaps under a situation where with compensating financial adjustments Quebec would assume total responsibility for post-secondary education within its boundaries while in respect to the other provinces jurisdiction between Parliament and the provincial legislatures

is made concurrent, with that of the latter to prevail in event of conflict.

In spite of the qualifications noted above, any new delineation of powers and responsibilities between the federal and provincial governments should proceed on the basis that this distribution should, in a broad sense, be the same in all the provinces. Any such delineation will obviously result in Quebec having a rather more restricted autonomy than it would prefer and in English-speaking Canada the federal authorities will play a more limited role than most of us would otherwise like. But if any sort of Canada-wide political entity is to be sustained, it will have to be through some sort of compromise involving the leaders from both established cultural communities. Only under the circumstance that the political authorities of Quebec decide to go it alone as an independent sovereign-state can Quebecers unilaterally define their constitutional relations with the rest of Canada. In this connection, the forceful words of Eugene Forsey to the 1965 Couchiching Conference need to be reiterated: "Some French Canadians seem to believe that the rest of us are so enamoured of them, or so convinced that we cannot get on without them, that we will pay almost any price to preserve even the most tenuous connection with them. This is a dangerous delusion."

The various proposals for a global statut particulier rest on the assumption that Canada is two nations and that there

should be explicit constitutional recognition of this underlying circumstance. In such a formulation one starts out of course with the fact that there at least is one nation in the sense that the French-Canadian community - or that part of it in Quebec - constitutes a self-conscious entity with its distinctive language, institutions, shared memories and will-to-survive. Like other modern nations in the cultural sense, this one demands a wide range of governmental powers to ensure its integrity and continuing survival. But what is missing from the two nations equation is the English-Canadian side.

Such a nation in the cultural sense may have existed in the period prior to this generation when most English-speaking Canadians, or at least most of those of Anglo-Saxon background, identified themselves to a greater or lesser degree with the world-wide Empire. This "nation" expired with the decline of British imperial power. Professor Brunet to the contrary, it survives only as a memory and not even that for English Canadians whose formative years have been since the Second World War. The dominant nationalism of English-speaking Canadians, and its strength should not be underestimated, is now a political rather than a racial or cultural nationalism, a nationalism whose models are Switzerland or India or Belgium rather than the United States or France where culture and political community coincide. I do not know whether English-speaking Canadians are willing to re-establish the Canadian political nationality as an equal partnership between the "two founding races" in the sense that as individuals those adhering to both

cultural communities can participate in its common affairs on an equal basis. There are hopeful signs. But apart from sentiments, Canadians outside Quebec are not politically organized to carry on discussions or negotiations with that jurisdiction. Obviously the federal government as constituted cannot assume that role, both because it contains Quebecers - both French- and English-speaking - and because Canada apart from Quebec is federalized by the same kinds of regional aspirations and interests that sustain federalism in unicultural nations like the United States and Australia. And the idea of an Estates-General of English Canada is unlikely to be accepted! English-speaking Canadians are no more likely to organize themselves to negotiate new political arrangements with Quebec than are Protestants to submit themselves to a common hierarchy in order to further ecumenical debate with the Vatican. They would so do only in the eventuality that Quebec should opt to be a fully sovereign-state whose relations with the rest of Canada would be regulated through the normal procedures of international law and diplomacy.

Special Status: The Only Way To Assure
The Free Development Of The Two Founding Peoples

Gad Horowitz*

Special status for Quebec is the way to survival for both Canadian national communities, the French-speaking and the English-speaking.

English Canada is a weak, heterogeneous national community, hardly able to preserve a sense of its own distinct identity in the face of the overpowering attractions of the American way of life.

In large part, the weakness of the English-Canadian community results from the fact that its national state also serves as that of the French-Canadians. The French-Canadians insist that the national state - the whole complex of feelings, loyalties, relationships and institutions summed up in a word "Ottawa" - must never, under any circumstances, become so powerful that the autonomy of Quebec - its ability to formulate and implement the goals of the French-Canadian collectivity - is threatened. The result is that "Ottawa" does not have sufficient power either legal or emotional, to integrate the diverse tribes, provinces and regions of English-speaking Canada. And disintegration opens the door to Americanization.

At this moment, English Canada needs strong

* Mr. Horowitz is a professor of political science at the University of Toronto.

leadership at the national level in order to preserve its existence as English Canada. If the galloping Americanization of English-Canadian economic, social, and cultural life is to be reversed, halted, or even retarded, this will be done only through positive policies devised for the purpose, and these policies are hardly likely to emerge or be implemented at the provincial level.

There is no way of avoiding an autonomous Quebec. Quebec demands and deserves a far larger degree of autonomy than that required by the other provinces. It will have this autonomy within Confederation, or there will be no more Confederation. The danger of English Canada rises out of the fact that the inevitable transfer of power to Quebec has been and is being carried out as part of a general transfer of power from the federal to the provincial governments. Bennett and Manning, Thatcher and Smallwood, are reaping where Lesage and Johnson have sown.

The autonomist drive of Quebec, because it proceeds through a constitutional structure which is incapable of making distinctions among the provinces, leads to an unwarranted degree of autonomy for all the provinces. It becomes possible to foresee the breaking up of English Canada into nine autonomous units loosely coordinated by the central government.

The obvious solution to Canada's difficulties would appear to be a federal government which is weak in relation to Quebec but strong in relation to the other provinces: in other words, a special status for Quebec within Confederation. This does not necessarily mean very much more autonomy for Quebec than it already has, but it does mean less autonomy for the other provinces than they already have.

English Canada will not become a viable national community unless its national institutions are strengthened in their relationship with provincial institutions. Since this cannot be done in the case of Quebec, it must be done in every case except that of Quebec.

The Trudeau solution to the Canadian problem is to return to the letter of the British North America Act as construed by the Judicial Committee of the Privy Council: let the federal government refrain from legislating in fields "reserved" to the provinces and all will be well. Quebec will not have to opt out of federal plans because there will be no federal plans.

This solution is an attempt to freeze the status quo. Quebec is to be satisfied because the B.N.A. Act may very well give it all the autonomy it needs to serve as a fatherland to the French-Canadian people; the rest of Canada is to be satisfied because Quebec will remain in Confederation, a province like all the others.

But what this really means is that the others will be like Quebec. All the provinces, from Newfoundland to British Columbia, will have enough power to be fatherlands, and Ottawa will be chairman of the board of fatherlands. The Trudeau solution, even if it works, will impose on English Canada a degree of provincial autonomy which is required by Quebec alone. It will render the federal government incapable of acting as a really powerful instrument of economic planning and social reform. It will remove from the hands of English Canadians their most useful instrument for reversing the tide of continentalism. This "solution" ignores the will of English Canadians to do great things, to embark on great national projects, and precisely in spheres of "provincial jurisdiction", through their federal government.

Furthermore, the Trudeau solution may very well not work. There are no strong grounds for believing that Quebec will be satisfied with a frozen status quo. The "solution" may therefore ultimately contribute to the final disintegration of Canada by rendering Ottawa incapable of reacting to the future irresistible autonomist surges of Quebec except by further general decentralizations of power.

Special status for Quebec is the only way to break out of the present trap which offers us a choice only between imposing centralization on Quebec and imposing decentralization on the rest of Canada. Quebec, and Quebec alone, should be

able to "opt out" of certain national policies. If it makes Quebecers happy to describe this as a situation in which Quebec alone is "respecting" the sacred directives of the British judges who have made our constitution what it is, so be it. Better still, amend the constitution.

The special status solution is being avoided because of the feeling that a federation cannot long exist half-centralized and half-decentralized. If Quebec has more autonomy than the other provinces, so the argument goes, that will inevitably lead to demands for still more autonomy, and finally, inevitably, to separation. But no attempt is made to back up this argument with any kind of proof. References to the Austro-Hungarian Empire are not proof, because Canadian society and Canadian circumstances in no way remotely resemble those of Eastern Europe in the nineteenth century. The only logic backing up the Austro-Hungarian hypothesis is the logic of the dominoes theory, which is no more valid here than it is in South East Asia. It is the common sense logic embodied in such aphorisms as "if you give them an inch they will take a mile", "government intervention in the economy leads inevitably to totalitarianism", and "don't let the salesman get his foot in the door". But surely one has heard of cases in which people have been satisfied with an inch, governments have intervened in the economy without destroying Magna Carta, and salesmen with their feet in the door have not made sales.

The special status solution is sometimes rejected on the grounds that no such solution has ever been tried anywhere before. And it is quite true that no one has yet devised a federal constitution with three lists of powers rather than two. But that does not prove that it cannot be done. Canada is in need of imaginative, ingenious, innovative leadership in the reconstruction of its national political institutions. It is indeed a pity that these institutions appear to be too weak to undertake their own reconstruction.

There is no good reason for avoiding careful study of the possibilities of the special status solution. The demand for it is already too strong to be eliminated with mere aphorisms. A constitution is nothing but paper unless it has some basis in the real feelings and loyalties of citizens. It is a fact that most French Canadians divide their national loyalty between the Canadian nation state and the provincial nation state of Quebec. It is a fact that Quebec, alone among the provinces, demands a degree of autonomy sufficient to preserve the existence and manage the affairs of a national collectivity. If the Constitution of 1867 cannot be stretched to make room for these facts, so much the worse for the Constitution of 1867.

The Necessity of Modifying the
Constitution and Recognizing a
Special Status for Quebec

Andrew Brewin*

The constitution is the fundamental law. In a federation the particular importance of the constitution is in its division of powers and responsibilities between the federal government and provincial or state governments. A constitution is of the greatest practical importance because in assigning responsibilities for areas of government to central and regional levels of government, it creates the framework within which nations may either grow or fail to grow.

Written constitutions can also be of importance as a source of education and inspiration to the citizens. They can be designed to make explicit the foundations of consent upon which a nation can exist as a nation or a federation can survive as a federation.

Because a constitution represents the fundamental law, it should not be subject to constant change. It must have a degree of permanence, so that both people and governments can make their plans with the knowledge that there exist stable institutions of government. However, a constitution, like other merely human institutions, should

* Mr. Brewin is the federal member (N.D.P.) for Toronto-Greenwood riding.

not be considered immutable, inflexible or unamendable.

What, then, are we to say of the present Constitution of Canada, embodied in the British North America Act?

In my view, the British North America Act requires substantial change and the most careful re-examination by Canadians at this time. The form of the British North America Act is, of course, that of a statute of the Parliament of the United Kingdom, passed in 1867. True, it has been amended from time to time and, for better or worse, has been subject to the process of interpretation by the courts.

There are, in my view, two basic reasons why it requires change. The first is that it is obsolete. It was passed in 1867 when Canada consisted of a group of isolated communities with agricultural economies totally different from modern industrial societies. It would indeed be extraordinary if a document drawn up to fit the circumstances of these colonies a century ago should remain appropriate in the totally different context of a modern industrial nation. The functions of government in this rapidly changing world are totally different from what they were then.

The second basic reason for a change and a new look at the constitution arises out of the crisis caused by what has been called "the quiet revolution" in Quebec. There are some who seem to think that the new sense of identity of the people of the Province of Quebec and of French-speaking people

generally will go away if it is ignored and that talk of constitutional change is so much nationalistic twaddle. I prefer to accept the view expressed by such men as the Editor of Le Devoir, the members of the Royal Commission on Bilingualism and Biculturalism, and indeed by the Premier of Quebec. These men seem to agree that the aspirations of Quebec have created a genuine crisis that requires constitutional revision for its solution.

I am glad to accept the view of Mr. Claude Ryan that Quebec is not at all eager to secede from Canada. But I also accept his view that Quebec wants a clearer and more satisfactory status in the federation. The sections of the Constitution must, he says, be gone over one by one, and a definition of this status drawn up.

I believe that we would ignore this plea at our peril. I believe that Canada's existence as a nation is endangered by the attitude of drift and laissez-faire which characterizes the attitude of the federal administration at the moment.

What, then, are some of the fundamentals of our constitutional structure that must be taken into account in the process of revision? I do not think we need to discard that which has worked well in the past or to adopt any revolutionary view that things must be changed, just for the sake of change. There are, however, certain matters which, in my opinion, call for change.

First, the transitional and obsolete sections in the

present constitution should be removed. This of course is not a controversial matter.

Next, I believe that it is important to revise the preamble. The preamble should refer to the historic partnership of French-speaking and English-speaking Canadians, and, indeed, to the contributions of Canadians of other ethnic origins. It should refer to respect for individual and linguistic rights as the foundation of our system of government.

I think we should state explicitly the determination to entrench historic rights of religion, education and language and to adopt legislative systems based on the British parliamentary model.

In my view, such a preamble would not be mere rhetoric. It would have a great educational value, not only for school children, but also for the many thousands of immigrants whom we expect to welcome from all over the world. It would enable Canadians as a whole to understand better their background and the fundamental facts of Canadian federation.

In my view, the constitution should include a Bill of Rights. At the moment we have a Bill of Rights passed by Parliament. Its inadequacy is obvious. It has no application to provincial legislatures. It is subject to repeal by Parliament at any time that Parliament chooses to legislate in a manner inconsistent with it. It has no effect on existing legislation.

A constitutional Bill of Rights would be a useful

instrument in the defence of our traditional liberties. It would also be useful as an educational tool.

The core, however, of our constitutional problem is the distribution of legislative power and resources as between the federal and provincial authorities. This distribution is chiefly contained in sections 91 and 92 of the B.N.A. Act.

In reviewing these central sections, we need to have some basic considerations in mind. First, we need to re-think what are the appropriate functions of modern government in the second half of the twentieth century, and to make an appropriate division of those functions as between the federal parliament and the provincial legislatures.

We then need to be sure that we have allocated resources to enable each of these authorities to fulfil efficiently the functions allotted to each.

The other crucial question is whether in our revised constitutional arrangements a special status for Quebec is required. I believe that this is necessary.

I would like to discuss what I mean by a special status for Quebec. I would like to make it clear that in my view these words have a flexible connotation. The words themselves are obviously capable of widely differing interpretations. The content must necessarily be the subject of study and discussion, and perhaps eventually of bargaining and compromise.

In setting out my own views as to what may be an

appropriate special status for Quebec, I am making tentative suggestions. I must admit that I do so from the point of view of an English Canadian involved in the federal side of politics. I am intent upon seeing an effective central government able to carry out some of the tasks of government which in my view can be best done by a central government.

I contemplate the special status for Quebec as a constitutional device which would enable French-speaking Canada to retain in Quebec functions and responsibilities which I consider to be intimately connected with its culture, history and traditions and which the rest of Canada might well desire to have exercised by the federal or central government.

To return, however, to the question of the functions of government which a constitutional revision must await, all governments in modern industrial economies, irrespective of ideological background, have assumed functions quite outside the traditional functions of governments of the past.

The scourge of unemployment in the 1930's led to the adoption of Keynesian theories of the responsibility of government to maintain full employment. This was as true of the United States, which emphasizes its devotion to private enterprise, as of various Scandinavian countries which have accepted the philosophy of democratic socialism. Both have moved towards a mixed economy, a sort of partnership between government and private enterprise. But government intervention to maintain full employment cannot stop there. Full employment

creates a risk of inflation. This in turn leads to demands for government intervention in the fields of price control and perhaps wage and profit control. And on the other side of the coin, governments are asked to assume responsibility for economic growth through public investment and through selective interventions in the economy.

All political parties now give at least lip service to economic planning and government intervention, although these used to be denounced not long ago as socialism. The problem governments face now is to make economic planning work. We are all familiar also with the tremendous expansion of government responsibility for social security in all modern democracies.

There is a third field of government intervention today: the provision of collective services, which may be described as the infrastructure of modern living. I refer to such matters as housing, health, urban development and re-development and vastly expanded educational services. Without these, modern living would be unthinkable.

In all of these fields of new government concern, economic planning, social security and collective services, we need to consider where the different levels of government, federal and provincial, can best assume responsibility and we need to clarify our constitution accordingly.

In my view, and I suppose the view of most Canadians, the federal system of government offers distinct political and

economic advantages. These advantages include the political stability required to attract foreign capital and mobilize domestic capital. They include the means to acquire a stronger political voice and bargaining power in international affairs and international trade than otherwise would be possible. They include the maintenance of a free trade area from coast to coast. They include the building of a more effective bulwark against foreign domination.

But if we are to have the advantages of a federal system, we cannot undermine federal authority in certain key areas. For this reason I suggest that the federal authority must be preserved in such fields as credit, banking, investment, monetary and fiscal policy, tariffs and transportation. There is no room here for any special status for Quebec or for any other province.

In the field of economic planning there is of course room for provincial and regional participation. Indeed, it is essential but it does not replace or eliminate federal authority in the key areas I have mentioned.

In the field of social security I believe there is room for a mixed system. This might give to the federal authority the responsibility for straight transfer payments such as are involved in non-contributory pensions and family allowances. In fields such as hospitalization and health services, the present system of provincial administration and partial federal financing seems to work satisfactorily.

There are many fields, however, of social security in which the provincial governments, being closer to the people, should have sole responsibility. If, however, we are to pursue seriously the goal of regional equality, equalization payments from the federal treasury will still be required.

In most areas in the field of social security, other provinces are likely to take the same view as the Province of Quebec. There would therefore be no need for a special status for Quebec. But if there are fields of social security which Quebec desires to keep within provincial jurisdiction, and the other nine provinces desire to have dealt with by the central government, the device of special status can be employed.

It is in the third field, the field of collective services, or the infrastructure, that special status for Quebec seems particularly appropriate. Quebec has a distinctive culture and language, of which it is justly proud. Intimately connected with this cultural tradition are such matters as education (at all levels), urban development and housing. Quebec may well desire to be responsible for these things without federal intervention of any sort.

But if the other nine provinces believe that university education, adult training, housing and urban redevelopment can be more effectively planned and financed on a national scale, why should they be required to move at the pace suitable to Quebec?

The device of special status can be used to solve

the basic dilemma. Is Quebec to be persuaded or coerced to accept the degree of centralization that the rest of Canada thinks appropriate to solve certain problems? Are the rest of the provinces to be denied the benefits of a centralization which makes sense to them because it is repugnant to Quebec? To choose either of these horns of dilemma endangers Confederation. A special status for Quebec is surely the way out. The critics of a special status for Quebec have refused to face this dilemma. They have hoped that if they ignored it, it would go away. I am convinced they are wrong.

Finally, there is the question of the appropriate means of achieving a review and a subsequent revision of Canada's Constitution. In my view the present federal government has lamentably failed to move forward in this field. It has consistently refused or failed to set up a parliamentary committee or to state any federal position. It has created a vacuum into which provincial authorities have sought to fit.

I think I understand the reason for this failure. The present government is afraid that a parliamentary committee would be something like a Pandora's box. It would unloose a divisive and partisan clamour that would destroy rather than build Canadian unity. In my view this is a tragic underestimate of the sense of responsibility which inspires most, if not all, Members of Parliament. At the time of Confederation, it was the practical politicians who built Confederation.

Of course, the future unity of Canada does not depend solely on a constitutional solution. It depends upon good sense, patience and understanding on the part of the people of Canada from all regions. But it also depends upon the willingness to tackle problems, even such difficult problems as constitutional revision, rather than to shove them under the table.

Particular Status - Another View

R. M. Burns*

I have a very real sense of putting the cart before the horse in writing this paper on an English-speaking Canadian's view of particular status for Quebec in the federal context. After all, these articles are mainly concerned with a clarification of constitutional matters, and views expressed here might have more substance if they had had the benefit of the valuable ideas that will follow from this examination. From the point of view of one who has had a long and continuous interest in this field, such clarification is necessary and wholly welcome.

But I have been asked how I think particular status might affect the federation and the answer cannot wait until I have read these articles. My ideas may not be entirely typical but I suspect that they may be reasonably characteristic of many English-speaking Canadians of present maturity. I will do my best to preserve my objectivity although this is not always easy in a field so full of emotional responses.

I said that clarification would be welcome, and indeed it would to me. Like Tennyson's Ulysses, I hear the sound of

* Mr. Burns is Director of the Institute of Intergovernmental Relations at Queen's University.

many voices and am confused. I sometimes have difficulty in distinguishing just what I am supposed to be dealing with in this analysis of the implications of particular status for Canadian federation.

Under the circumstances I will start by attempting to set out the terms of my understanding. I have read from Trudeau to Chaput through Morin and the Saint Jean-Baptiste Society, and must admit that the extremes generally make more sense than the middle ground. In the attempts by those who have converted particular status into a form of the loosely associated states, there is an air of unreality and a disregard for practicalities which can only lead me to the view that the approach in itself can have no real meaning at all and is merely a political step in the direction of final separation. There are really three concepts of Canadian statehood which relate to my interest here and these tend to merge into one another. First, there is what we call particular status or special status, ('particular' for some reason or other causes less concern than 'special'). Second, there is associate status. Third, there is separation. This last is such a special status, particularly for Quebec as a French-speaking island in a North American sea, that I do not think it will be necessary for me to deal with it in the context of the analysis I am attempting.

It is not very original to point out that under the constitution we now have, French-speaking Canadians in Quebec

already do have a particular status. They have this in connection with their laws and their language and the very fact of their continuing vigour lends some support to the view that these special arrangements were of substance and not mere political shadows.

But it would now seem that many of influence in Quebec feel justified in rejecting or re-interpreting the settlements of history, either on the grounds that they were inadequate or that they have been improperly applied. On the other hand there are many other people in Canada who believe that the path taken has not led us to the strong and united nation that the Fathers of Confederation clearly desired and that changes must be made if that desired goal is to be reached. Obviously this is the stuff that arguments are made of, for the two points of view are not reconcilable as they stand. Some reasonable solution in compromise is called for.

To the extent that the particularities are related to the preservation of Quebec's cultural distinctiveness, I believe that few English-speaking Canadians would be prepared to quarrel with them or even oppose their reasonable extension. The rub comes when it is proposed that there should be an extension of these special rules into the economic, fiscal and constitutional fields for reasons ostensibly cultural but which seem to be more closely concerned with the establishment of political authority and economic power at the expense of the effective continuation of the Canadian nation. I appreciate

that there are arguments that the two approaches are inseparable but so far I have found these are less than objective and not particularly convincing. One cannot help on occasion feeling with a sense of frustration that a growing willingness to accept reasonable compromise is increasingly being interpreted in some quarters as a sign of weakness and the basis for an extension of demands.

It is with respect to the effect of particular status as a dilution of central power on the fiscal and economic side that I will devote my main attention. There are, of course, other important influences but without effective fiscal and economic power no national authority can continue to exist. It is in this area of disagreement that the danger to our federation from particular status in its extreme forms most clearly lies today.

Before a problem can be solved, it must first be understood. I will attempt here to set out briefly some of the main factors that seem to me to be concerned with its solution.

Under our present constitutional arrangements, there is a definite imbalance which is having unfortunate effects on our national development. In total this cannot have been all that serious for despite it we have attained the second highest standard of living in the world. But broken down into regional effects there can be no doubt that essential changes and improvements need to be made.

To listen to the champions of provincial rights, and these are certainly not confined to those seeking particular

status for the Province of Quebec, one might gather the idea that if only a redistribution of revenue powers could be attained in a manner more favourable to provincial needs and ambitions, all would be well. One hears very little of the possible need for a redistribution of expenditure responsibilities which in today's terms are heavily slanted in the provincial favour.

Under the present situation, provincial governments and their municipalities are heavily dependent on the federal government which both legally and practically controls the bulk of the more important revenue sources. And even those provinces which are not dependent through equalization grants have been persuaded by financial need to enter into conditional arrangements in special fields. There is a good deal of nonsense talked from time to time about the necessity of governments raising the revenue they spend. But in some important respects the situation as it has existed is not altogether a healthy one particularly when it leads to continuing irritations and escalating provincial demands for redress.

But what do we usually see proposed? It is that the federal government should both (a) turn over the greater share of the income tax fields and succession duties to the provinces and (b) increase equalization payments so that the provinces without adequate financial capacity can carry on their services at a satisfactory level - which is usually

related to that prevailing in the wealthiest of other provinces. How both these are to be accomplished together is never fully explained.

However, there is a certain logic about these proposals as long as one is content to remain within the boundaries of the local interest. But is this the only possible answer? Again, what of the expenditure side? Apart from some willingness to accept assistance through conditional grants in aid, one does not see any noticeable inclination on the part of the provincial governments to consider the possible desirability of turning over some of their responsibilities to the central government. And it is these ever-growing expenditures which are at the base of provincial/municipal budgetary difficulties. I appreciate these are the constitutional responsibilities of provincial governments in most cases, but constitutional provisions are liberally interpreted on occasion and this could work both ways. Neither am I oblivious to the argument of the greater effectiveness of local authority in many of these service areas, but in these days of rapid communication and developing managerial techniques, it might even be that some provincial responsibilities could be as effectively handled under Parliamentary control as under that of the Legislatures. But my purpose here is not to examine the rights or wrongs of the situation. What is right for one is wrong for the other all too often in these political areas of concern. What I am attempting is to relate the results of

these various policies to the continuing effectiveness and viability of the central government in respect of its place as a force in the lives of the people of all Canada.

Let us first look at the question of the ability of the Government of Canada to control or at least influence the course of the economy through fiscal and economic policies. Admittedly, the record is not that impressive, but to the extent that anything has been done, it has been done at the federal level. The provinces, at least so far, have taken little or no responsibility for economic stabilization and generally have been concerned with their efforts, independently or with Canada, to promote their own economic growth. They have contented themselves with the exercise of purely financial policies related to their physical spending needs. And it is generally accepted that, in the circumstances, this has been the proper course although it may not always be so in the future.

If we are to accept the ideas of those who seek greater provincial control, it will mean a substantial transfer of federal taxing power to provincial authority. Mr. Lesage's 25% of the individual income tax has become Mr. Johnson's 100% and similar trends in the corporation income tax and succession duties are to be found.

There is, of course, no definitive answer to the question of what is the necessary share of a tax field for effective fiscal authority. Mr. Robarts has suggested 40% is

enough. The Carter Commission has implied that anything less than 50% is not politically realistic and this would appear to be the line which Mr. Sharp is prepared to draw. All these assumptions seem to be based on a continuing acceptance of the idea that, failing some new rules of coordination which we have yet to develop, the basic responsibility for economic stability must be that of the federal government.

The Quebec Government's position is a little more difficult to understand and one can only assume that if Mr. Johnson is serious he must feel that no such central fiscal authority is required at all. Such ideas seem to owe much to the Tremblay report of eleven years ago which would have left Canada with only the indirect taxes to carry out its responsibilities, quite the opposite of the views of both the Rowell-Sirois and the Carter Commissions.

If the adoption of that idea would not be enough to eliminate the federal government as a truly effective authority in fiscal and economic matters, we find in some of the more extreme demands claims for provincial authority in such clearly federal fields as monetary policy, tariff policy, broadcasting, treaty-making, in fact almost every area that might marginally influence provincial economic life. This is where particular and associate status merge in cloudy confederalism edging towards ultimate separation.

It would be quite unrealistic not to acknowledge that federal policies in most cases will have strong effects and not

always favourable ones upon the provincial economies. But that is part of the game and we usually assume that on the whole the benefits are greater than the penalties. But in the same way, provincial policies have strong effects upon the national situation: sometimes plus, sometimes minus. And again, this is part of the same game and what is fair for one is clearly fair for the other. We are led to the unavoidable logic of the idea that if provincial influence is necessary in federal policies, then federal influence is necessary in provincial policies. In actual experience this latter idea has been recognized and has been accepted, if sometimes grudgingly, through conditional grants and like joint programmes. It is only quite recently, as a result largely of the influence of Quebec, that withdrawal of federal influence, first by "contracting-out" and latterly in Mr. Sharp's new proposals in fields of social significance, has begun to take place. It is important to remember, however, that there has been no indication of federal withdrawal in fields of economic growth, so presumably Canada still accepts, in part at least, its fiscal and economic responsibilities.

If we admit that these inter-relationships exist and must continue to exist, it is not likely to be very profitable to spend a great deal of time in trying to sort out the division of powers and responsibilities on the assumption that we can produce something that will be a great deal better than that which we have. Even if we could at this point in time, I have no doubt that events would soon date our efforts.

By this I do not mean that such effective changes that can be agreed upon should not be made. But it would be unwise to assume that they are going to correct any but the most fundamental imbalances in the situation. They will not provide us with any final and irrevocable answers.

The problem is as old as the relationships between governments. It is not confined to the federations, but is found in the relationships of unitary states with their regional units and increasingly in the relationships of provinces with their municipalities. Here, greater control at the centre seems to be the favourite solution to the problem.

The difficulty lies in the inescapable fact that there is no necessary relationship between a government's ability to raise revenues in an economic way and its responsibility to provide public services. The situation is further complicated by the unequal financial capabilities of the various units of government within the federal structure. For example, the same percentage of individual income tax is nearly four times the value per capita in Ontario that it is in Prince Edward Island or Newfoundland.

What are the essential functions that can be said to require the existence of an independent national authority? First, there is the need for the exercise of fiscal and economic power through monetary, fiscal, and economic measures. Second, there is the need for a national tax structure which reduces the dangers of inter-provincial barriers and enables

the conduct of business in a more efficient and economic manner. Third, there is the need for fiscal adjustments or equalization, which will enable some reasonable national standard of government services to be maintained throughout the nation. There are others in other fields of relationship than the fiscal and economic. But without those I have noted no true national existence can continue, and this is a situation in practice the provincial governments so far have been prepared to accept.

I do not think it can be successfully argued that these are not functions properly assigned to the Government of Canada. Whether or not they have been adequately performed is another matter, but there is no basis for any assumption that an alternative approach would have been more successful.

But an additional and a complicating factor has come into the case with the increasing predominance of provincial and municipal influence on the expenditure side. There is a tendency to limit our consideration of fiscal policy to the revenue factor and no doubt this is the most important. But, by definition, fiscal policy is more than this and must take into account as well how and when funds are spent. There is no volume of evidence, however, to indicate that the expenditure function has been or can be readily used in a manner which is theoretically justified. Most government expenditures are relatively inelastic in that they become built into structures of established and future need which practically and politically are difficult to vary in any great

degree. Anyone who has tried to reach a meeting of minds with an operating department of government on the essentiality of its activities will appreciate that while it is easy to increase expenditures reducing them is another matter. Even in the field of capital investment there seems to be very little room for a quickly variable approach - and it is quickness of response and variability of impact that is needed. What room for fiscal activity on the expenditure side there is is largely in provincial control.

It has been a generally accepted fact that federal and provincial policies have been primarily and properly directed toward different goals. That of the central government is to look after the broader national interest while the provincial authority is concerned with its own internal problems. To the extent that each is fully successful no legitimate questions of authority should arise. But the problem of definition is difficult and when one side feels that the other is not performing in an adequate manner, there will always be a tendency to move into the vacuum and inter-jurisdictional functions inevitably arise. This is, perhaps, an important reason for federal intervention in provincial fields especially in the social sector. It may be the reason, in part, for the growing ambitions of some provincial governments to exercise authority in areas clearly allotted to the federal government by the constitution. The current Quebec attitude on educational broadcasting may be an example of this.

Clearly, our problem is either to develop the means for each to operate successfully strictly within its own sphere or to develop some method of coordinating the different interests and powers. This is not a situation peculiar to Canada although for obvious reasons it has assumed more critical importance particularly in the Quebec context than would otherwise have been the case. The fact is, however, that two objectives cannot stand alone and distinct. Even if we were successful in defining accurately the limits of influence of federal and provincial governments, cooperation would still be required. And unless a strong focal point of interest and objective is maintained, the demands on cooperation are likely to be so confused that no practical benefits can follow.

The objective of a stable, growing economy where equity, as among its people, is of paramount importance is clearly stated in the recent report of the Royal Commission on Taxation. Most people seem prepared to accept the Commission's views on the objectives although many may differ on the means of attaining them. But regardless, if Canada is to remain an effective political entity and not disintegrate into something less than a nation, we must certainly be prepared to attain some measure of agreement in our search for the best path to these ends. Sometimes one is hard put to avoid the feeling that the true objective of the public welfare is lost in the struggle for political power.

If we accept, as most do now, the idea that some form

of fiscal control by government is necessary to our economy, we have, I think, but two principal alternatives. Either we must be prepared to accept the paramountcy of the central government in all matters which directly affect the national well-being, and this applies essentially to the fiscal and economic fields, or we must develop a more active approach to cooperation between federal and provincial governments, so that workable alternatives may be available to us. Hard and fast distinctions need not always be made. Often, differences will be resolved in the greys of compromise. But even under the most favourable conditions, the task is a formidable one which is going to demand of both sides much more in breadth of mind and attitude than they may seem prepared to devote to it at this our hundredth anniversary.

No one would by free choice decide on the committee as the ideal vehicle for carrying out policies which require decision and action in crucial areas. Committees are useful in developing a consensus. They are rarely effective in providing actual solutions. But most of us, English-speaking or French-speaking, would be prepared to acknowledge that except in the case of some national emergency, unitary control of the kind we had in the war and early post-war years, is not within the bounds of today's reality. Therefore, we must adjust the system to our needs and such adaptation does not permit inflexibility of minds or attitudes. The need for some better method of operation has been recognized, for one of the

principal studies of the Tax Structure Committee, yet to be completed, is entitled "Future intergovernmental liaison in fiscal and economic matters."

The difficulty of the problem is illustrated by its long history. The idea of formal, federal-provincial machinery of coordination goes back almost to Confederation itself. Since 1935, from Mr. King's proposals at the Dominion-Provincial Conference of that year to Mr. Lesage's ideas for a permanent federal-provincial secretariat, there has been a growing interest in the development of some better forms by which the national interest and local ambitions can be reconciled. In many areas, where aims can be defined, much has been accomplished, far more than most people know or often are prepared to acknowledge. But in the vital areas of our present concern, the field of policy development in fiscal and economic matters, we have been less successful. No doubt this is in part due to the difficulty of reconciling aims, but I think also we are faced with problems of political conflict and with the fundamental question of where such intergovernmental machinery fits into the established rights of Parliament and the Legislatures. Nor must we forget the potential dangers that are involved in the substitution of the rule of man for the rule of law, which are inherent in this approach.

But if we are to reach the full potential of our development as a nation through the path of strong, stable growth, we must seek the questionable harmony which only

appears attainable in such a compromise. Whether we like it or not this is a complex and often dirty world we live in wherein we must face our responsibilities and accept that the ideal solution is unlikely to be within our reach. A united, though not necessarily a uniform, nation will come only through an appreciation and acceptance of the fact that every problem has more than one side and for each advantage gained something must be sacrificed. We will accomplish nothing by crawling into our tents and pulling the blankets of self-delusion over our heads. We have a great nation; we can have a greater one but the path is not likely to be through division and the substituting of weak association for the strong partnership we could be enjoying today.

I have tried to outline what I consider are the obvious answers to the question of how the Canadian federation would be affected by the granting of "particular" or "special" status to one province. I have concluded that much would depend on what was meant by particular status and how far these claims trespassed on the necessary authority of the central government in the modern economic world. I believe most English-speaking Canadians already accept the fact that the French-speaking Canadians of Quebec already, by constitutional right, have a particular position. As far as I am aware, there has been no inclination to remove or limit the situation. In fact, it is a reasonable assumption that most thinking English-speaking Canadians would be quite willing to accept

some extension of this status where it was truly related to the preservation of native French-Canadian culture. But I doubt as part of the process they will be prepared to accept General de Gaulle as a logical substitute for the lessening influence of the Crown and the Commonwealth.

But what we often now seem to be faced with is a willingness to use the cultural approach as an avenue for political authority. This I doubt many would be prepared to accept not only for what it would do to Canadian nationality itself, but also for more mundane and practical reasons. There are many people with a knowledge of the economics and politics of the modern world who would be prepared to question whether we are strong enough to afford the questionable independence of fragmented policies which may move in a number of different directions as the ambitions of eleven different governments may dictate.

Is There A Future For The French-Canadian Man?

Fernand Dumont*

For the time being, the French-Canadian man still exists. He is a difficult subject to pinpoint and define, undoubtedly a little more so than the American or the Frenchman. But one has only to wander into La Beauce or Charlevoix, and even into certain sectors of our large cities, to be able to recognize this unique human being. And to rediscover within oneself that old familiar affection. Is there any point whatever in the continued existence of this odd specie of human life? That is the real question - the most trivial question - but I am astonished that it is not raised more often in the debates which exhaust our emotional and intellectual energies. Introductory questions are always a trifle simplistic; nonetheless, the reader will allow me to pause over this one.

Is there a future for the French-Canadian man?

One thing appears certain to me: the nationalist phrases and intentions which have motivated the consideration of these problems here are outmoded. The average French Canadian today would have difficulty recognizing himself in the

* Mr. Dumont is director of the Institute of Social Sciences at Laval University.

cultural, religious, economic and political syntheses into which, until quite recently, all the deficiencies and aspirations of the French Canadian were thrown. If one compares Mr. Jean Marchand and any village politician who still trumpets the nationalist slogans of yesteryear, the former obviously is right from the outset. When Mr. Marchand emphasizes that we belong to the technological age and that technology, at least in essence, knows no boundaries, he is reminding us, to good effect, of the obvious.

But he doesn't pursue this line of reasoning far enough. With such a universal viewpoint, I don't see why he stops at the Canadian border. Why shouldn't our children be unabashedly Americans? It is a serious question, and one which has confronted every generation for over a century. Personally, I am not absolutely opposed to the United States: I find their industrial power astonishing; I heartily admire some of their universities; and I am infinitely more interested in their literature than in any issuing from here or from Toronto. Naturally, I find American policy in Vietnam disgusting, but it doesn't seem to me that Canada's policy in that regard is particularly outstanding either. In a word, it seems to me to be a flagrant contradiction and a vestige of cautious regionalism to reason from the universality necessary in a technological society to the necessity of building a Canada as opposed to the United States. I don't see what the purpose would be in simply shifting the boundary lines, and

I also don't see what serious differences there are between Canada as such and the United States, which would warrant creating a new nationalism. And if such were the case, there we would be, catapulted out of a French Canada which no longer exists into a Canada which does not yet exist. This is extremely distressing for those who, like myself, are in the middle of life.

I am, therefore, obliged to revert to the original question, that of French Canada. Much emphasis has been placed on the urbanization and industrialization of Quebec. We have seen how these transformations have challenged the traditional style of living and thinking, as well as the ideologies which gave meaning to our collective existence. The current revolution in education will perhaps be an equally important factor. In any case, it is propelling our radical, social mutation even further along in the same direction. If we have survived as a people, it was above all because of the isolation of the mass of the population. Following the conquest, the seigneurial system separated us from our Anglo-Saxon neighbour. Consequently, our rural areas lived on the fringe of North American society. It was also the era when Quebec City viewed itself as "the Athens of North America" - a fact which angered Olivar Asselin, but pleased the others. In addition, our collective ignorance acted as a preservative; even in the case of the working classes, those who migrated to the city established themselves in sectors and in occupations

which perpetuated their way of life and language, both of which were more or less bastardized, but nonetheless distinctive. Let us not unduly criticize "joual". It has been and still is the most faithful companion and the most incontestable proof of our survival.

If the revolution in education is successful, all that will rapidly disappear. People will be better read; there will be more technicians. Will Quebec provide them with the environment appropriate to their work? And most important of all, will they view the survival of the French Canadian as valid per se? I will lay odds, in any case, that the attraction of the American empire will prove stronger. And it will not be checked merely by an improvement in the quality of our language. Language functions in relationship to something outside itself, to a community of interests which is worth expressing, which experiences an irresistible need to do so, and a unique joy in doing so.

We can foresee something similar for the intellectuals, those whose role it is to question values. Until recently, our own difficulties provided our élite with the raw material for their reflection, and also with a comfortable reason for avoiding the more universal anxieties and problems of this era. They made a profession of thinking among themselves. Already there are some of us working along other lines: those of science, of philosophy, of a world in the making. Several of us have thought of finding a more peaceful place to work elsewhere; of no longer getting bogged

down every morning in the local issues which make the headlines; of no longer wading through the philosophy of Mr. Gabias or the political science of a certain federalist representative. Not so long ago, very few people had the possibility of choice. However, we know that there were many in big business and scientific research who did emigrate - either externally or internally. Henceforth, an ever increasing number of French Canadians will be offered the choice. Certain people are delighted with this. In speeches geared to our diehard nationalists, we hear the slogan: "Each person must count for one". Isn't this a dangerous delusion? A nation only exists if each individual feels a fundamental sense of belonging to it. We would certainly consider the future of France to be in jeopardy if, at a given moment in his lifetime, each Frenchman was obliged to decide in all sincerity "for" or "against". Such will soon be the case in this country for all those who will, through education, have acquired the power to uproot themselves.

The really decisive factors in "the quiet revolution" were of a cultural nature. There was the educational reform certainly; but there were also vague aspirations, the desire to adopt new attitudes which contributed to it. All the formal ideologies which had given us our identity vanished rapidly. For example, within a relatively short period of time, Catholicism ceased to be the backbone of our nationality. Moreover, many believers, of which I am one, are delighted.

We all welcome the arrival of pluralism. But where will we now find the unanimity without which a nation cannot exist? We are now at the stage where we need another collective plan of action. Will this be possible? Herein lies the root of the question and constitutional discussions only make sense in this context. Time is running short. We should have some concrete results to show for it right now. The revolution in education appears to have been accomplished. But what about decisions in the fields of economics, development, planning and scientific research? We are still too quickly reduced to a state of confused questioning. This results immediately in ideological conflicts of a strictly political nature.

Finally, at the heart of the matter lies a fundamental moral conflict which has not been elucidated. I should like to state, in all simplicity, the nature of this conflict within myself.

At the end of an article on the collective destiny of our civilization, Paul Ricoeur wrote: "We must be progressive in politics and retentive in poetics." I should like to comment in my own way on this "contrast-complement" concept. In principle, the only real policy possible from now on will be one based on the guidelines of the development of contemporary industrial firms: everywhere, the most advanced procedures in planning and development must be initiated, and national boundaries are illusory, except for reasons pertaining to strategy and economic recovery. But collective ideals and

reasons for existence cannot be defined in terms of technology and planning alone. Even the rise in the standard of living is not a major criterion, neither for individuals nor for collectivities. To want to draw the line at uniform basic security and suitable income smacks of old liberalism. We posit the capacity of the individual to choose his values. This capacity does not exist unless it can rely on the support of a shared, common consensus. This consensus is linked to the past in two ways: it relies on communities of interests which have evolved throughout the course of history; and it is rooted in the values and fundamental symbols found in the very depths of the human consciousness. Tradition and progress: within this context, poetry and technology, love and the family budget, values and planning come together.

At this crossroads, national feeling and politics also intersect. Fidelity to the nation belongs to the past. Moreover, it is only one component, and probably not the most important one. Nonetheless, like our organizations, it is one of the most widespread vehicles for the expression of communal values.

In this context, I personally believe in the virtue of small nations: it is in them that communal values have the opportunity of striking deep roots. To wish to create a Canadian nation is to try to manufacture a past, which is quite absurd. As for Canadian politics, I have difficulty seeing how it alleviates our helplessness in the face of the great

American mastodon. I also have difficulty seeing how it gives Quebec more scope in the international sphere.

If I, for my own part, incline more towards the separatist solution, it is - perhaps paradoxically - in reaction against all narrow forms of nationalism whether here or in Ottawa. Quebec must avoid all useless detours in order to affirm its presence in the world as quickly as possible. Our cultural values, which are still in the formative stage, need scope if they are to flourish. The richness of our own past does not lie in opposing English Canadians or Americans. Its sources are Paris, Brussels, Algiers, Rabat, Tunis - geographic networks which bypass Ottawa. If, in this, the federal foreign affairs minister sees the inevitable dissolution of federal ties, as he stated recently, he has my sympathy. But I cannot help questioning once again the cultural ties which would link us with Winnipeg or Toronto in a way so direct that we would have to come to an agreement in order to define what our cultural growth has in common with that of France or Tunisia. After all, Canada is only a hundred years old and I would like to stress this for the benefit of a certain federalist thinker who thinks that to leap from the nineteenth into the twenty-first century is easy. If we must retain some link with Ottawa, and on that score I have no fixed convictions one way or another, our only criterion, I repeat, should be the incontestable progressivism of federal politics. I have already said that I don't perceive any

tangible indications of that. And I even wonder whether the economic interests which Quebec shares with others aren't more universal than those which the federal government puts together in an incongruous manner.

Let's get back to the main point. Are French Canadians capable of freeing their oldest solidarities from the dead shell of yesterday's nationalism, to nourish on that basis a collective course of action which might contribute to the betterment of humanity? Only then will there be a reason for perpetuating the French-Canadian man. For the moment, and I say this unashamedly, I am reduced, like everyone else, to the most elementary feelings. When I watch the hesitations and contradictions of our political powers, when I sink into the bog of our domestic quarrels, when I see the moment of decision in this or that domain slip by, I must confess to a most profound pessimism. Like many others of my generation, I have made my choice, for the time is coming when we will no longer be able to turn back and when we must cling to old loyalties. I shall continue to live, to love, to dream, and to write in French Canada. I don't quite know why. In any case, I shall do this for the sake of remaining loyal to that vague ideal which is the legacy of my illiterate ancestors and which, even if I never fully understand it, derives from a desperate sense of honour.

Preparing The Case

G rard Pelletier*

To choose either for or against special status at the outset and in the abstract would be absurd and meaningless in the strongest sense of the word. Worse still, it would be showing a definite prejudice before even having considered the facts of the matter. And yet, there are many people making this choice, for and against, as if it were already understood. Some people, rightly persuaded that "Quebec is not a province like the others" conclude on the basis of this single fact that special status is necessary to allow for this difference. As if the very essence of Canadian federalism was not exactly that - the accommodation of the inherent diversities among our people through a wide degree of autonomy permitting their free self-expression. Is the autonomy provided by our Constitution insufficient? Possibly, but this fact has yet to be established beyond all doubt before we spend our energies on difficult constitutional reform.

At the other extreme, a second type of legal mind manifests just as much rigidity in refusing change as the first type does in clamouring for it. Certain opponents of special

* Mr. Pelletier is the federal member (Liberal) for Montreal-Hochelaga riding.

status counter this notion with total "a priori-ism". Convinced, also with justification, that it is not in Quebec's interests to break up the country, they hasten to the conclusion that the very idea of special status is incompatible with an effective federal system. Is Canadian unity fragile? That is obvious. But it has never been proven that greater autonomy for Quebec would compromise this unity. Perhaps, on the contrary, it would introduce into relations with the central power greater flexibility and a possible reduction of dangerous tensions. That also remains to be seen. And it is precisely what we haven't yet seen.

Moreover, it is indeed evident that here we are not in the realm of the absolute. On the contrary, we are in the midst of the relative.

There can be no question, therefore, of claiming special status as if it were a good in itself, something desirable per se which we should blindly pursue as the Templers did the Holy Grail. But it would be equally as absurd to consider special status under whatever form as an absolute evil. It all depends, as Quebecers are quick to say. It depends on the ultimate political objectives one wishes to achieve, on how one views Quebec's future and Canada's future.

Let us exclude all the "indépendantistes" from the debate. They don't consider the risk of destroying Canada as something to be feared. Thus they think it quite fair to support vigorously the concept of special status, as a

transitional stage, even if - especially if - it gets out of bounds and directly threatens federal cohesion.

Let us also omit all the separatists, who don't even know they are, i.e., people who are confused to the extent that they don't perceive the far-reaching consequences of their premises and don't weigh the effects of their actions. Finally, we are also not dealing with those who favour the status quo, those who view any change as distasteful, and whose refusal of all evolution would preclude both Canadian federalism and Quebec fulfilment alike. The discussion opened by Le Devoir has as its framework a two-fold perspective: that of a firmer assurance of a future for Quebec and that of a future for Canada which will in no way be compromised. In other words, it is a question of seeing whether Quebec needs a special status, and whether such status may be compatible with an authentic and viable federalism.

It is difficult to answer the first question given the present state of research and given our political experience of the last century. In fact, only research can tell us exactly what needs would be met by this status, and what such status would have to be to meet these needs. No one has done this work. It is obviously up to the promoters of special status to undertake this research. Le Devoir has initiated it: it will have to be pursued if we do not wish to see the debate peter out as it threatened to do last winter. In addition, we will have to take note of an important and too

often overlooked fact: that Quebec has never yet fully exercised the powers at its disposal. With regard to immigration, for example, although it has undeniable and uncontested jurisdiction in this field and despite the obvious cultural implications of the question, the Quebec state has not yet budged. It has done next to nothing with regard to the linguistic question. In the field of education, it was less than five years ago that the provincial authorities assumed their responsibilities. It would perhaps be premature to conclude that a "special" status is necessary, before having weighed in practice the possibilities of "general" status.

However, for discussion purposes let's allow the hypothesis that Quebec's cultural distinctiveness requires the acquisition by our province of a special status. As Quebecers we are not ready to accept any confederal compromise which would endanger the cultural fulfilment of our group, nor any constitutional formula which might destroy the country of which we are an integral part. Therefore, if a special status is necessary, it will have to be negotiated. And if it is compatible with "the Canadian hypothesis", Quebec has never been in a better position for undertaking such negotiations provided, obviously, that we know very precisely what we want and why we want it. It is, therefore, of fundamental importance to prepare the case. The case is not ready for presentation, to say the least. And because, until now, people have been above all preoccupied with stirring up the

question rather than with exploring it, it has already become enmeshed in misunderstandings.

In fact, we are confronted with two different conceptions of special status, one which, for Quebec, would constitute being duped at the bargaining table, and the other which, if it were put into effect, would lead, over the short or long term, to the end of Canada.

Of the two conceptions mentioned above, the former is the type of special status meant by its English-speaking promoters. Recruited especially from the ranks of convinced centralists (notably within the NDP parliamentary group), they see things in simple fashion. For them, it is a question of allowing the federal government to invade successively all the areas of provincial jurisdiction (most notably, the field of education) but directing these invasions solely towards the provinces with English-speaking majorities, hence with the single exception of Quebec.

Thus, according to this conception, "special" status for Quebec would mean respecting the present Constitution, whereas "general" status for the rest of Canada would mean having the right to violate this same Constitution at will. For it is worth noting that the New Democrat supporters of special status have never proposed to the House of Commons that Quebec be granted the slightest new power, beyond those which the Constitution already recognizes. Thus, some Quebecers are in for a rather brutal disillusionment, if they take it as

fact that the English-Canadian apostles of special status have in mind an increase in Quebec's powers. And yet isn't that the primary objective of the Quebec supporters of the same doctrine?

Inasmuch as we are familiar with their point of view, Quebec supporters are not expecting to gain from special status the "privilege" of clinging to the present Constitution. On the contrary, it's the constitutional discontent which has sparked them, sustained by the profound conviction that the B.N.A. Act no longer corresponds to Quebec's needs. One can judge the level of misunderstanding by the fact that English-speaking supporters of special status wish to free English Canada at will from an overly decentralizing Constitution which they find nonetheless suitable for Quebec, whereas their French-speaking counterparts wish to free Quebec from the same Constitution, because they find it too rigidly centralist!

Is there, for special status, a via media between these two conceptions? Perhaps this special issue of Le Devoir will uncover it for us. It is therefore advisable to wait before making a pronouncement.

But we already know what pitfalls are to be avoided. First, avoiding the icy slopes of diehard particularism. Certainly, belonging to a French culture necessitates, for example, keeping firm control over our system of education, and the use of the French Civil Code precludes handing over the administration of justice to an English-speaking majority

living under the common law. But that does not also necessarily mean that we should collect old-age pensions at the provincial level simply because we are French-speaking, nor does it necessarily mean that, for the same reason, Quebec should deal directly with other countries. Similarly, to assume from the start that Quebec shares no interests in common with the rest of Canada, on fiscal questions for example, or on monetary policy or foreign trade, is to distort perspectives even before they have been established.

According to those rules, we would quickly come around to rejecting the federal idea itself. There is no doubt whatsoever that certain current conceptions of special status are incompatible with federalism, however flexible the latter may be, and that these conceptions are close to being disguised forms of the associated states theory or are, unconsciously various forms of separatism.

Finally, after all these paragraphs devoted to the constitutional problem, and in a special issue motivated entirely by this single preoccupation, we must nonetheless end with a warning against constitutional obsession or monomania.

In an article devoted to the development of Latin America, Josue de Castro wrote (Esprit, July-August 1965) the following:

You know that Latin America has become the home of theoretical culture, and especially of legal culture. That's why Latin America's biggest production is constitutions. Since

achieving independence, Bolivia has produced three hundred and forty revolutions and Venezuela three hundred constitutions (a world record!)

No, it would be absurd to claim that we have reached that point in Quebec, or that we will have reached it in twenty years. But how can we conceal from ourselves our propensity for theorizing particularly in the cultural and legal spheres? Besides, being a little more cool-headed than our Latin brothers to the south, we have a greater resistance to extremism. The fact remains, however, that we have always shown signs of a penchant towards abstraction, and this has its dangers. At the turn of the century we wasted a great deal of energy in endless debates over the Church and the State, in impassioned speculations on the choice (theoretical) of the best political system. One need only refer back to the philosophy manuals (Zigliara, Lortie) with their byzantine theses on the respective merits of the monarchy and the republic. A half-century later, it seems hard to believe that our fathers wasted their time on these questions, while at the same time neglecting to master from day to day the democratic tools, already at their disposal, for ensuring the development of the community.

Today, the themes have changed. It is no longer the ecclesiastical syllabus which impassions us; it is the Constitution. We have gone from the sacred to the secular. But we are still in the theoretical and legal realms, and therein lies the danger which threatens us.

It is therefore understandable that certain politicians, myself included, while discussing special status or any other constitutional question raised, and while reserving judgment until more fully informed, refuse to grant to this aspect of our political problems the quasi-absolute priority which it seems to have enjoyed for several years among the Quebec intelligentsia.

And when our friend Vincent Prince invites "Mr. Marchand and his colleagues from Ottawa" to "find out the possible contents" of an idea such as special status, because its supporters are "more numerous than they seem to think" and that "some of them are notwithstanding people of considerable prestige," he does not convince us. If these prestigious people deem it essential to give priority to the constitutional question, they are free to do so. And we would certainly be wrong to refuse a dialogue on the subject. That is why we have agreed to contribute to this collection.

But why should we invest the better part of our energies, as these people have done, in a pursuit which does not seem to us to be a priority and when we think it more important to devote these same energies to the immediate development of a more vigorous economic policy, a more equitable social policy, a foreign policy more in line with popular aspirations. Why should everyone be condemned to focussing on the one problem when there are a great many other complex tasks and as many different approaches to politics as there are individuals?

We are not claiming that the pursuit of a special status is harmful or totally useless. We are only saying that in the present set of circumstances other undertakings seem more urgent to us and their pull is stronger. We fear as well that in terms of results more is expected from an eventual constitutional reform than such a reform can supply.

If we are right in refusing to grant this question priority, if the action revolving around the Constitution does end in the disillusionment we fear, perhaps it will be deemed fortunate in the final analysis, that the French-Canadian society did not stake everything on the one draw, in this year of grace (and disgrace) 1967.

The Associate State Option

François-Albert Angers*

One of the criticisms which used to be levelled at the associate states formula was the fact that it simply didn't exist. This is no longer the case. That point has been settled for those who liked to dismiss "associate states" as a vague, idealistic concept which could not be discussed for the moment because nobody really knew what it was. In fact, the March 13 issue of Newsweek, among other publications, announced that more British colonies had recently become political entities: the West Indian islands of Dominica, Grenada, St. Lucia, Antigua, St. Kitts, Nevis and Anguilla. News items stated that they had also received an "associate states" constitution. Thus, a judicial concept apparently born in Quebec as a dreamer's idea has spread throughout the world and has been embodied in a new form of political entity conferred by London within the British Commonwealth of Nations. It would be interesting to study the text of this new associate states constitution. However, here in Quebec we already have a fairly well-defined formula for associate states in Canada which is contained in a brief prepared by the Saint-Jean Baptiste Society for the Quebec Legislative Assembly's Parliamentary Committee on the Constitution.

*Mr. Angers is director of the Institute of Applied Economics at the Hautes Etudes Commerciales.

As invariably happens, it supplied its opponents, whose interests were more or less engaged elsewhere, with material for the petty criticisms by which they have tried to discredit the idea of associate states - as if the Saint-Jean Baptiste Society's proposal constituted the only possible solution.

This writer still insists that, before discussing the terms, we should first consider the spirit and principle of the formula and compare it with that which applies to other formulas, particularly the constitutional status quo, co-operative federalism, special status or total sovereignty. We could add that this procedure is even imperative in view of our situation; otherwise, some of our validity in claiming any kind of special treatment will be lost. Within this framework, our desire to retain French traditions and the French way of thinking is set in opposition to the equally traditional Anglo-Saxon pragmatism which has always influenced the approach of solutions such as the status quo, co-operative federalism and even special status.

The concept of associate states somehow grew up between the traditional idea of real confederation, where neighbours and strangers join rather than associate to attain certain specific ends, and the idea of federation which, in Canada, now stands for nothing more than a state of judicial bickering. In terms of peoples' rights, "associate states" carries with it the idea of a free and independent association. In character, it is more permanent than confederation and less restrictive than federation. It has a greater capacity for associating groups of varied numeri-

cal importance, without allowing majority rule constantly to cause the assimilation of smaller groups by larger ones. The associate states formula is the result of very practical observation of the causes contributing to the failure of the Canadian experiment.

Basically, all the problems of Canadian "confederation" stem from the ambiguity of a federal system which judicially associated only territorial units, at the same time giving cause for hope, through declarations made at constitutional conferences, that two unidentified peoples within the constitutional structure would join on an equal basis to form a great country. Even if it is currently the habit in some circles to challenge the importance of constitutional texts, it nonetheless remains that all of the political history of the last hundred years in Canada has been determined by the particular wording of the B.N.A. Act. The text of the constitution has always determined the type of solution adopted in the face of problems. This has been the case because the wording of the Constitution is such that it may be used either to uphold or to violate its principles, depending upon one's interpretation. Practically speaking, the concept of the associate states formula was essentially based on this experience, on the necessity of spelling out, in clear and concise terms in any future constitution, the existence of the two peoples - of the two nations - and of placing this association within judicial structures.

This requires that the pivot of the new constitution be no longer territorial units, purely geographic provinces or states, as in the United States from which the model was taken

in 1867, but that it be primarily two different state entities within which the two peoples' existence and right to self-government would be recognized and incorporated. Following that, the concrete form which the agreement will take may vary according to the merit of the problems and of the interests at stake. From that point on, according to priority, we may build not only a constitutional framework similar to that of the Saint-Jean Baptiste Society of Montreal, but also a whole series of frameworks depending upon what were considered to be the points of agreement and disagreement of the two basic partners, on what can or cannot be implemented jointly, and the terms of the joint implementation. Federation could remain the organizing principle of an English-speaking state entering into any association with Quebec alone; but it would only be at the conclusion of negotiations that we would finally have an association of two federations - one for the east, one for the west. In fact, there would be several reasons why, once assured of their rights, the Maritimes would prefer to associate themselves with the French-speaking state within a federation of geographically Eastern states rather than keep on suffering - as they constantly complain - from Western-oriented policies in a vast Canada; the Acadians of New Brunswick, for their part, would also likely lean in this direction.

Finally, associate states may be viewed as merely this or that division of powers within the constitution. However, it is far more satisfactorily defined in terms of the spirit in which the constitution is organized and the principles which must be formulated to ensure the perpetuation of this spirit

within the judicial framework. From this point, everything will fall into place as it does in any valid social contract where freedom is guaranteed and the viewpoints of the contracting parties meet. In my opinion, given the present atmosphere of political relations, this proves the very definite superiority of "associate states" over the special status formula in Canada. Basically, special status is really a way of accomplishing, without saying so, exactly what "associate states" would affirm outright; in this sense, the former only perpetuates the present basic ambiguities.

In the few pages assigned to me in this special issue, it would not be practical to go into a lot of technical details on the actual working out of the associate states formula. Indeed, it would require a book in order to explain it clearly and to ward off the superficial objections which opponents will always bring up when faced with an incomplete outline. Such an outline would merely create more confusion than enlightenment.

It seems more important to me to study an aspect of the problem which is more often talked about nowadays, and that is the degree of practical difficulties involved in establishing associate states compared with the other formulas - and more particularly, compared with special status and independence.

Two arguments are currently being developed to show that we must work towards either a special status or independence rather than towards "associate states" - the formula least likely to be accepted in English Canada. The first of these

arguments is based on that mathematical reasoning whereby it is always easier to accomplish a little than a lot. Thus, in a graduated scale, according to the line of least resistance each formula represents, the formulas are ranked: cooperative federalism, special status, associate states and independence. Whence the conclusion: since we no longer want cooperative federalism, let us work towards establishing special status.

The second argument considers both cooperative federalism and special status as two defeatist formulas which will only produce piecemeal concessions. Hence, the conclusion is drawn that both should be rejected. The value of the associate states theory is acknowledged, but research into it would be a waste of time since English Canadians, rather than adopting it, would prefer to give us independence.

The first argument is too mathematical and does not sufficiently take into account the psychological factors involved; the second too readily dismisses our importance within the practical and economic structure of Canadian life. The ambiguities surrounding special status are partly responsible for the conclusion reached through the first argument. It will certainly be easier to establish some sort of special status than a form of associate states. In short, this has already been proven since we already have a kind of special status which came about in 1954 through the integration of provincial income tax within the general system of federal-provincial agreements. This has since been further expanded by the opting-out formula which Quebec alone has exercised.

But it would be fooling ourselves to think that an attempt to define a formula, give it a definite legal meaning, and implement it rapidly would be easier in the case of special status than it would be for associate states. English Canada as well as government authorities are already building a wall against the idea of broader "concessions" in this direction. In the eyes of English Canadians, special status takes the form of a privileged status claimed by people who do not wish, for valid reasons, to question the basic concept of Canadian unity. This interpretation cannot help but increasingly engender their antagonism towards Quebec. They are already asking us: "Do you or do you not want to be Canadians?" And the question will become increasingly bitter to the extent that we use political strength in the pursuit of special status.

We will be accused of using our capacity for creating political unrest as a lever for extorting privileges from Canada. In other words, English Canada would have to change its attitude towards the Canadian problem in order to accept a special status formula capable of resolving our present difficulties. And special status contains nothing which would invite this change in attitude. The associate states theory cannot be viewed in the same light. This, of course, is the reason English Canadians are so vigorously opposed to it from the outset. Unlike special status, it does not leave them any of the loopholes provided by the game of gradual compromise and concession. But by demanding equality rather than special status, the associate states formula

strikes at the very core of their own moral consciousness, and doesn't leave them a leg to stand on. That is why I believe that by building our politics around a special status, we are heading towards fresh difficulties and a new deadlock. The demands for a special status seem to me to have value only as a temporary solution of partial gains, obtained within the framework of precise and firm demands for constitutional negotiations aimed at establishing associate states - nothing less. And because this is clearer, more likely to happen, I believe that we will thus arrive at the establishing of associate states sooner than at a truly special status if we are content with this objective.

At this point, the second argument takes over. It states that this procedure is a waste of time and that English Canadians will prefer independence to it. Those who hold this view seem to me to be using French logic to interpret Anglo-Saxon thought. Quebec is too important to the Canadian economy for Anglo-Saxons to overlook their own interests to that extent, simply to gratify a fit of pique. The opposite appears likely; and if the push towards independence progresses, even just a little, it will lead English Canadians to propose "associate states" to us, as a compromise.

Hence, the danger of the independence movement lies not in its existence, nor in its aims, but rather in the spirit which it embodies and which may possibly crystallize. This spirit, through commitment and absolutism, might cause us in exasperation to choose an emotional solution (given our Latin temperament)

rather than a reasonable one when the time comes to make a choice. It would be an illusion to think that at that point independence would be more easily had than associate statehood, because English Canadians are never going to offer us our independence on a silver platter. It would be showing ignorance of that bulldog tenacity, symbolic of the British temperament, to think that they won't be intransigent in their resistance when they get the impression that, through sheer bravado, we have refused truly satisfactory negotiations.

In conclusion, it should be noted that there is such an association of ideas between the associate states theory and special status that the works appearing in this issue shed as much light on the legal aspects of constitutional associate statehood as they do on special status. If constitutional special status obtains all the powers really necessary for the free development of the Quebec nation, it will wind up resembling associate statehood very closely. And the details in which they don't resemble each other will perhaps be dangerous compromises, agreed to because they were negotiated in an overly pragmatic atmosphere. In such an atmosphere, the principle of liberty and equality, which must be evident throughout, might be lost.

It is important today that we have a constitution which won't repeat the mistake of 1867, in neglecting to formulate the principles by which the constitution is to be implemented. It is in this area that the associate states theory is superior. It embodies the spirit and principles of the new system and establishes clearly which compromises are acceptable and which ones are not.

The Alternative for Quebec: Colonialism
or Independence

André d'Allemagne*

On the occasion of this centenary which is furnishing the pretext for the grandest, full-scale mystification program in our history, it is important to recall why Confederation is at the root of our major national political problems. On the one hand, Confederation was responsible for creating the "Quebec reservation" by assigning a specific territory to the French-Canadian people and by granting it a government which would normally evolve into a national state. On the other hand, as the logical result of the conquest of 1760, Confederation was also responsible (within the framework of political colonialism), for imposing strict limitations on the powers of this Quebec national state.

This political colonialism, as we know, was reinforced by economic colonialism with the result that in every aspect of its collective existence today, the progress of the Quebec nation is dominated and hindered both by Ottawa and by the Americans. Even if the populace in general isn't clearly aware of it, colonialism, here as elsewhere, has become a world-wide phenomenon. What the populace does increasingly

* Mr. d'Allemagne is an active member of the Rassemblement pour l'indépendance nationale (R.I.N.)

understand, however, is the unacceptable nature of Canadian Confederation as it exists today.

In fact, in Quebec, there are scarcely any partisans of the constitutional status quo left. Those who defend it are more likely to be found in Ottawa, in the front ranks of Prime Minister Pearson's entourage, where they are attempting to block Quebec's attempts at emancipation on the pan-Canadian level and on the international level alike. By contrast, in Quebec, the contest is going on among several options designed to modify the constitutional context: special status, associated states and national sovereignty.

To the extent that one can endow the expression "special status" with an exact meaning, it would certainly appear to be a new version of the old, Duplessis-style autonomism of the negro king. According to this formula, Quebec is different from the other provinces (although it is nonetheless still a province) through the exercising of existing rights which the other provinces don't make use of and perhaps through the acquisition of some new rights, thanks to a decentralization of federal power. On the one hand, the special status formula thus upholds the letter and the spirit of colonialism and is merely delaying a solution to the perpetual conflict between the federal state and a provincial state which is tending to become genuinely national. On the other hand, however timid and conservative it may be, this formula, before it has even been fully defined by Quebec

federalists, has already been systematically denounced by English Canada where it is rightly thought that if Confederation is to survive, the provinces must all remain equal.

Associated states has become the magic formula of those who feel that the situation needs to be radically reformed but who wish, at the same time, to reassure everyone. Those who seriously and lucidly propose such a formula are, in actual fact, "gradual" separatists who consider it wise to hide the direction they wish to take from the populace.

The result is that the slogan "associated states" simply sows confusion amongst Quebecers whereas the real federalists are not in the least deceived: Ottawa has repeatedly stressed that associated states would lead to the disintegration of Canada. Moreover, it is quite understandable that those who are opposed to the mere increase in the powers of the Quebec state under some "special status" formula must all the more strongly reject a system which would make the Quebec state more or less the equal of the federal state. It is a blatant sign of the lack of realism characteristic of a certain, peaceful, old-style nationalism that such formulas as special status or associated states - formulas which cannot come to pass without the consent of English Canada - are being proposed when it is a well-known and obvious fact that English Canada rejects these very formulas. Not that it is impossible to envisage an eventual collaboration between Quebec and Canada,

notably on the economic level, but this collaboration will not be possible until Quebec, as a preliminary, has retrieved total political power. History amply illustrates the fact: it is only when a people have acquired possession of their national sovereignty and have access to international status that they can freely and effectively negotiate with other countries and "associate themselves" if necessary with other peoples.

Quebec's internal needs (economic planning, cultural rejuvenation and socialization) require that the nation hold total political power. In the realm of international exchanges, the province's needs require that other countries be able to consider Quebec as their equal, which, practically speaking, means that Quebec must be independent. Moreover, if one understands that the people of Quebec are, at present, in an authentically colonial situation, one gets a glimpse of the fact that there is only one possible solution. National independence is the first step towards emergence from colonialism. It would seem that the circumstances for achieving freedom have never been so favourable to a colonized people, but it is a mistake to think that time is necessarily on our side. The immigration, cultural assimilation, economic and financial domination to which we are subjected make liberation an urgent matter. For that reason, no other task is as urgent as the struggle for independence in Quebec. There is also no other alternative than that of colonialism or independence.

Should Our Economic Policy Be Determined
By Quebec Or By Ottawa?

Otto-E. Thur*

Even in relatively decentralized economic systems like those of North America, intervention in the economy on the part of the state has increased significantly in the last 100 years, and especially since the 1930's. Today we find the state burdened with responsibilities in many fields, and possessing important economic powers. In this context, economic policy means only, at first sight, a group of heterogeneous interventions which are difficult to discuss with any precision. Nevertheless, by classifying the principal elements of economic policy, we shall be able to set up a frame of reference accurate enough to allow for a meaningful consideration of the subject.

Every modern state, having a so-called developed economy, must perform four basic functions: it must provide its population with public services; it must ensure an equitable distribution of income; promote economic growth; and finally it must set about to stabilize economic activity. In the Canadian context, the next question is to decide up to what point these

* Mr. Thur is Associate Dean of the Faculty of Social Sciences of the University of Montreal and Director of the Department of Economics.

functions can be usefully carried out by one, ten, or eleven governments. In other words, what is the scope and what are the limits of economic decentralization? Only by analyzing each of these four functions will we succeed in determining answers, however approximate, to the above question.

Public Services

Public organizations are expected to provide the population with a fairly wide range of services, taking into consideration the traditions and aspirations of a given society as well as the means available. Public services may be divided into two categories: those for which prices can be fixed, i.e., assessable services, and those for which prices can not be fixed, i.e., non-assessable services.

1. The assessable public services are those whose costs and benefits can be readily determined. In this category of services there is no difficulty in making the recipient pay for the service rendered. Such services exist in the fields of transportation, communications, water, gas, and electricity. Public enterprises which sell these services function most often in the same way as private enterprises. They follow a policy of national pricing based on production costs, and aim at balancing their income and expenditures. It may happen that the public agencies impose special obligations upon the aforementioned public enterprises. In such cases public agencies should underwrite the exact cost of services so obtained. Only under those conditions could public enterprises pursue a policy

of rational development which would restrict confusion, high-handed proceedings, and inefficiency to a minimum.

One specific example will readily clarify the significance of this statement. A public enterprise such as Quebec Hydro must apply rational pricing by which each hydro consumer will pay his share of the cost. The government may, in view of various considerations not related to energy, such as considerations of employment, request Quebec Hydro to set discriminatory prices in favour of certain industrially underdeveloped regions, in the hope of attracting new industry to those regions. In such cases, the government should refund to the public enterprise the difference between the actual cost price and the preferential price being granted the region at the state's request. It is only on this condition that the exact cost of each decision taken may be made immediately apparent.

From whom should the public enterprises providing assessable services depend? The answer to this question cannot be cut and dried, since it is conditioned by the size deemed desirable for the public enterprises set up in specific sectors. The desired, or optimum size, as the economists say, depends on the technical specifications of the production and, in the case of public services, is dependent upon two special characteristics: does the increase in the quantities produced allow the unit cost to be lowered, and can regional integration contribute, without adding to the cost, to an increase in production? When large-scale production is likely to bring

down the cost, and general regional integration appears advantageous, it should be the federal government's responsibility to provide this public service. In other cases, the provincial governments should be responsible, and sometimes the service should become a municipal responsibility. Ten or eleven railroads, the same number of international airlines, ten or eleven mail services would amount to an enormous waste of resources. On the other hand, a single network for the production and distribution of electricity would be of no practical advantage because of network transport losses, since it would not pay to send the current to distant points of the country. As a result, a region larger than the provinces would not guarantee any saving. For other public services even the provincial size would appear to be oversize: up to now, the municipal or metropolitan network has been quite adequate for water distribution.

The size of public enterprises, therefore, is primarily dependent on technical criteria. Whether they lie under the jurisdiction of the federal or provincial governments will depend on the geographical scale that the public enterprise will require to operate under the best possible cost conditions.

2. The non-assessable public services are those whose recipients cannot readily be identified, or those whose consumption would be limited if the recipient were to himself pay their actual costs. These two types of problems are, however, fundamentally different. There also exist non-assessable public services which belong to both categories.

Whenever the recipient cannot be readily identified (for example, who benefits, and to what extent, from diplomatic and counter-intelligence services?), the service will be paid for out of the general budget. Direct personal assessment being not feasible, each citizen contributes to the payment of expenses in direct ratio to his ability to pay (or in direct ratio to what the administration deems to be his ability to pay, which is not necessarily the same thing). In very few cases do these services need to be split. The fact that they are a single service results in a streamlining of operations. That is why they are generally provided by the federal government and paid for out of its budget. Only powerful cultural and economic interests can justify the few exceptions to this rule.

The second group of non-assessable services comprises services which, in the opinion of the public authorities, would have only limited consumption if the cost had to be underwritten by the user. Now, since the public bodies deem them to be essential services liable to benefit the whole population, they decide to offer them at a price which covers the costs only partially, or even to offer them free of charge. The part of the costs which is not covered by the user will have to be paid out of the general revenue of the public bodies concerned. Non-assessable services of this type raise more delicate problems than all the public utilities which we have considered before, for the latter require that the public bodies make value judgments concerning them. They must decide which services must

be given priority, in which volume, and under which conditions they are to be offered to the population.

With which actual services are we concerned here? Under this heading we may group education, culture, and social security including health and hospital services. Were it not for their relatively high cost, a large majority of the population could benefit from these services in far greater volume than is the case at present. To promote use of these services, the governments resort either to underwriting the cost or to subsidizing part of their cost; whatever type of promotion, the service becomes more accessible to the population at large than previously.

Since the rendering of these services implies making choices and establishing priorities, related decisions also presuppose the existence of a certain degree of cohesion in the society concerned. Two implications flow from this statement: first, if public opinion is deeply split, the public authorities will be powerless to act; secondly, agreement may be reached only on clearly defined programs. At which level of government should these choices be made, the federal or the provincial? Since a certain degree of homogeneity, be it historic, cultural or ethnic, is likely to be instrumental in bringing about cohesion, provincial rather than federal decisions seem to be preferable in this field. Nevertheless, the province's jurisdiction is limited by two factors which must be discussed.

The first is the need for cooperation. The services which we have just discussed have one feature in common - they

are expensive. For this reason, it is difficult to institute programs different in every respect from those in other provinces; the tax load must be comparable (or otherwise the province having the heavier tax load will be slowing down its own development), and services rendered will have to be comparable as well. Consequently, there will be only marginal differences between programs. Besides, a country's fundamental social aspirations, whatever its constitutional system, vary little from one region to another.

The second limitation concerns non-assessable services which satisfy both criteria at the outset. In other words, their recipients are not easily identifiable and the contribution of these services to present and future welfare is important enough to warrant a government subsidy. Such services are few in number, but are of the greatest importance: among them we will list scientific research for the present, and in the future the fight against all kinds of pollution, where this problem will become so acute as to merit the systematic attention of the public authorities. Inasmuch as it conditions general development, scientific research should interest the federal government; as an integral part of higher education, it should fall under provincial jurisdiction. Thus, in this field, concurrent jurisdiction should be acknowledged. Much the same can be said of the pollution problem: its interprovincial implications bring it under federal jurisdiction, while its effect on health places it among the provincial responsibilities. No exclusive jurisdiction is justifiable in this case: the two levels of

government must strive to discover a basis for peaceful coexistence in a positive or constructive sense.

3. Constitutional jurisdiction over public services is one matter; the financial ability to fulfil these obligations is another. Levels of government can discharge their responsibilities only if they are financially able to do so. Here is where we hit upon the financial unrest in Confederation. For many years the population and the governments have been paying particular attention to the non-assessable public services which must be entirely financed or subsidized by the authorities and which are generally under provincial jurisdiction. We have shown elsewhere before the Tax Structure Committee was set up by the Ministries of Finance, that the financial needs of the provinces increased much more rapidly than those of the Federal government and that, despite the gradual reduction in the Federal government's share of income tax, the provinces were involved in a process of gradually increasing deficits.

The rapid increase in provincial expenditures, which can be blamed mostly on sky-rocketing education and hospitalization costs, can be illustrated by several significant comparisons. At the end of the war, Federal government expenditures were three times greater than the combined expenditures of the provincial and municipal governments; from 1948 to 1953, they were still twice as great as subordinate governments' expenditures; in recent years federal expenditures are smaller than those of the provinces and municipalities. (These comparisons have been set up in terms of national accounting; direct financial transfers

from federal to subordinate governments, under statutory subsidies and tax arrangements, are not to be considered as a Federal government expenditure but only as subordinate governments' expenditure: the latter are actually making the expenditures.) We may add that, since 1961, the rate of growth in federal expenditures has been only half the rate of growth in provincial expenditures, and nothing at present would point to the end of this trend.

Moreover, we may notice that the nature of the problem is identical in all the provinces, varying only in degree. It is probably greater in Quebec than in the majority of the other provinces because of the especially conservative financial policy adopted by its government from 1948 to 1957. During this time Quebec increased its public debt by only 7.1 per cent, while Ontario increased its debt by 93 per cent. For this reason Quebec lagged further and further behind in its investment in its economic infrastructure. At present it is attempting to make up for lost time and to bring itself up to the level of the most dynamic provinces.

In the past there were some very large transfers of tax receipts from the Federal to the provincial governments. Although this tendency has slowed down, it still seems to prevail, at least for the immediate future. However, it is more likely that we can expect the Federal government to resist with more and more vigour any further requests of transfers of tax revenue. It is not a question of good or bad will from the Federal government; rather of knowing if the financial resources

at the Federal government's disposal allow it to meet all its responsibilities or not. As we specified at the outset, the state must carry out four essential functions and not the sole function of providing public services. And the same financial resources must be tapped for the four closely linked objectives.

We are confronted here with the crucial problem in federal constitutions: there is no golden rule for tax allotments among qualified governments which would decide once and for all the respective share of each. To look for this golden rule in the existing constitution or in any future constitution would be disillusioning. As the stress shifts from time to time from one function to another, sharing of taxes will vary or be applied under differing conditions. We are and must remain bound to periodical reappraisals of tax sharing. In this field, the legal rule is a highly perishable good.

Equitable Distribution of Income

Every state must ensure such a distribution of the total income among individuals that it could be considered equitable. Obviously the latter term is rather vague and its meaning may be subjected to substantial alterations as time passes. In a confederation, distribution takes place on two levels: first a reduction in the gap between revenues occurs at the interregional level, as the Federal government intervenes to provide equalization payments to provinces whose per capita revenue does not reach the national average; and secondly, on the interpersonal level, as the Federal and provincial governments institute sliding scales on personal income tax and grant various subsidies. (However we must not

forget that a redistribution of income is effected also through providing non-assessable public services; paid out of general revenue, and thus partly out of progressive personal income taxes, identical services are rendered to people whose actual contribution varies in accordance with their income.)

The usefulness of inter-provincial redistribution has never been questioned: if this state of affairs were not at the very heart of Confederation, the Federal government would have relinquished one of its main responsibilities, and one which it alone can assume. Quebec is a recipient of the above-mentioned federal transfers, and this particular role of the central authority is accepted there by all except those who promote the choice for independence.

Interpersonal transfers which come under the heading of social policies are under provincial jurisdiction. But for a few rare exceptions, provincial jurisdiction prevails in this matter. Among the exceptions let us mention unemployment insurance and the federal old age pension, the two sole important departures from this rule. The first is under federal jurisdiction because of the central government's responsibility in the field of economic stabilization and is hardly an issue; the second is a minimum security measure passed in a field which had been rather neglected by the provinces until very recently. This pension is likely to remain necessary for years since the subsequent contributory programs can provide only limited benefits. We may well wonder if the minimum old age pension should not be maintained indefinitely (whether it remains

federal or becomes provincial is, from the social point of view, a secondary consideration, even if it is not secondary from the constitutional point of view), for the contribution plan is relatively inflexible in its allotment of benefits and is not particularly favourable to social progress. (Let us recall that the Quebec plan foresees the possibility of adjusting allowances to offset increasing prices, but the maximum increase is limited to 2%, while in the first fiscal year the price rise was twice that of the maximum allowed.)

The field of social allowances, like that of public services, should be a field for interprovincial cooperation. Minor disparities are probably possible, but important gaps in allowances are undesirable: inside any confederation social allowances must remain comparable if we wish to keep a certain inter-regional mobility in the labour force.

Economic Growth

The responsibility for promoting economic growth was not clearly delegated either to the Federal or to the provincial governments. The problem simply did not exist when the Constitution was drawn up: at that time, the state was supposed to set up a minimum of institutions necessary for public order and for the functioning of society, while private enterprise attended to economic expansion. Today we know that public authorities can play an important part in promoting this growth by forming conditions favourable to the development of private initiative and by directly backing some projects which appear to be particularly advantageous. But another question

remains without a precise answer: what degree of centralization or decentralization would be the most beneficial from the development point of view? Many experiments have been tried in the last 20 years. Countries try out one form or another of economic programming, attempting to find the best combination of centralization or decentralization, and so far none seems to have found it. This is the lesson to be drawn from the French, British, Italian and even Russian experiments in this field.

The pursuit of economic development means a constant search for expansion in the quantity of goods and services produced, for improvement in their quality, and in the last few years, for general distribution of activity in different regions of the country. For governments, this growth-goal will imply: forming a labour force qualified for the tasks to be undertaken in a modern economy; creating an efficient transportation and communications network which could support industrialization; applying a tax system which would benefit economic expansion by the use of tax advantages and temporary subsidies; setting up monetary and financial institutions to back investment projects and the functioning of key enterprises, which will attract other activities in their wake; finally, managing commercial policies so that they support expansion efforts, either by encouraging resistance to foreign competition, or by helping conquer new export markets. Thus the government has many possibilities for intervention. These will work only if rationally coordinated. In Canada these powers are shared by

two levels of government, each holding part of the power and therefore part of the responsibilities. Education is under provincial jurisdiction; transportation, communications and taxation are shared; financial and commercial policies are under federal jurisdiction. Therefore, under the Constitution there are eleven governments responsible for development, and whatever constitutional changes take place in the future, there will still be eleven governments responsible. For even if a change in the Constitution were made, assuming that only one government remained, that government would start to set up regional authorities; assuming that there were ten, these ten would have to set up some means of cooperation. Whether we like it or not, agreement between the two levels of government is an absolute necessity.

For the last few years, the Federal and provincial governments have set up a series of institutions whose goal was to promote economic expansion by particular means. In this way Quebec has acquired an Economic Development Council, has created the huge network of Quebec Hydro, has set up a General Financing Corporation, has authorized a Savings and Investment Office, and is studying the possibility of building a national steel industry. None of these initiatives has run up against the slightest constitutional difficulty. Despite its decrepitude, the B.N.A. Act has proved to be flexible enough not to delay any economic initiative: provincial authorities more often lacked the will to act than the power to do so. If this is the case, would we not be better advised to change the men rather than the Constitution?

Stabilization Policy

According to the Constitution, responsibility for stabilizing economic activity falls upon the Federal government, and this has never been an issue with any provincial government.

Stabilization is brought about mainly in two ways: by fiscal and monetary policies, the two being able to play identical and equally valid parts. For a long time, however, the weapon of taxation was little used, and whenever it was, only tax on new investment was implied. However, the efficiency of these tax-rate variations proved poor on a relatively short term basis. Since this experience was acquired, fiscal policy has been more interested in the flexibility of individual income taxes. This poses the problem of how taxes should be shared in Canada, a problem about which there are differing opinions. One approach represents the Quebec government's wish to obtain, if possible, all of the personal income tax revenue; another approach, taking the opposite point of view, is that expressed in the Carter Report which advises the Federal government not to relinquish any more revenues from direct taxation but rather to do all in its power to regain revenues from direct taxation from the provinces by leaving them equivalent indirect taxation rights.

The motivation behind the position advocated by the Quebec government is that of the immediate need to increase provincial income: in the field of indirect taxation the provinces are restricted since they may use freely only one

indirect tax, the sales tax. Since this tax is specifically added to the price of every transaction, it rates as one of the least popular taxes. To improve their situation the provinces' only recourse would be to be granted the major part or the whole of direct taxation.

As for the argument implicit in the recommendations of the Carter Report, it seems to be the following: in the field of price-stabilization, varying direct taxation rates proves to be a highly effective measure. If the Federal government abandons this taxation field and retains only a small proportion of individual income taxes, it will have to apply extreme rate variations on a small tax slice in order for the variation to be followed by perceptible economic effects. In a depressed economy, it should practically cut by one-half or more these direct tax revenues, while increasing expenses to support aggregate demand. Considerable budget deficits may result, and making up for them by adding to the national debt could well bring on an increase in the interest rate just when the economy would need a low interest rate. Instead of working together towards one goal, such fiscal and monetary policies could cancel each other out. In a time of prosperity, there would be little improvement in the state of affairs, when inflationary pressures appear. The central government must then raise its tax rates drastically in order to try to curb the general spending trend, and sharply reduce its own expenditures to create a deflationary margin equivalent to the inflationary pressure.

Is the government able to function when its income and expenses are subject to very extreme fluctuations? We may well wonder. The Federal government should therefore be able to deploy large funds when necessary for repeated and subtle interventions depending on how much the economic position of the country needs them.

There can be no doubt that in the particular field of economic stabilization, the country is at a crossroads. If the central power continues to be systematically weakened, the economy runs the risk of remaining virtually defenceless against business fluctuations. Even now it seems to me that Canada has no adequate means of protection against inflationary pressures, even if it could still defend itself more or less satisfactorily against a depression. This in no way excludes the eventuality of dismantling the Federal government's means of intervention, on condition, and only on this condition, that the provincial governments would be ready to share responsibility for stabilization and to submit to the rigid discipline which such a responsibility entails. The other solution would be that of the Carter Report, a solution which is curiously reminiscent of the Rowell-Sirois Report: in the matter of stabilization, the central government would be solely responsible, but it would limit the provinces' field of action so that they would not impede stabilization. Their tax revenue would be stabilized by the Federal government and therefore their actions could have no appreciable effect on the central government's stabilization effort.

The way to a solution will likely be through strengthening the provincial governments, although at a slower rate than has been the case up to now (for the last 20 years there has been a recovery from the exceptionally centralized situation existing after the war) and this will imply definite engagements from these governments in the field of stabilization. It is a long-term project not to be rushed, and which other countries with similar constitutions have just undertaken. Here I refer to the Economic Stabilization Bill which has just been passed in West Germany.

As for monetary policy, the second means of stabilization, the problem which it raises is both more simple and more complex than that raised by fiscal policy. On the constitutional level it is simpler, because all monetary matters are under federal jurisdiction. At the practical level it is more complex because, although under the present Constitution, the deciding bodies are the federal monetary authorities, their margin of autonomy is limited as compared to decision-making in the American financial markets.

It is not very feasible to decentralize our monetary policy: intended to protect our internal equilibrium, in other words to counterweigh as far as possible successive inflationary and deflationary pressures, the monetary policy is at the same time a flexible weapon for keeping our balance of payments in equilibrium. Snap technical decisions must be made every week, every day, to guard against often unforeseeable situations.

If eleven governments needed to confer each time this occurred, the result would be a state of harmful and costly indecision which would paralyze the monetary policy. Let us recall that no federal system had planned a monetary decentralization, and it is hard to see what would be gained by it. It is likely that certain regions might need a special financial status because of economic underdevelopment. However, the solution to this problem should be the creation of specialized financial institutions and not that of a decentralized monetary policy.

Conclusion

Some readers will be left with the impression that very few changes could be made within the frame of a new constitution. They are not wrong. The idea I wished to put across is the following: perhaps there are excellent linguistic, cultural and other reasons for encouraging a special status for French Canada within Confederation, but it is sure that in the economic and financial fields a new constitution would contain few innovations. Constitutional phrases solve no problems in this field. It is informed and constant action which can gradually influence the present state of affairs. The post-war Italian constitution stated carefully in its preamble that each citizen had the right to work. However, the average Italian unemployment rate was 10% during the whole post-war period.

Should I conclude that, at least insofar as economic and financial problems go, I belong to the ranks of the

constitutional empiricists? Perhaps one could invert the question and wonder if we are not doing financial and economic questions too much honour by including them in a constitution. I do not really believe that constitutional research can help us find relevant and lasting economic solutions. It seems to me that there is much more promise in micro-institutional research, and I hope that we will not wait too long to explore this line of action in Canada.

Economic Planning: Its Requirements
Inside a Federal System

Roland Parenteau*

Economic planning in a democracy creates acute problems of coordinating decisions because of the great diversity of economic forces with divergent, if not contradictory, aims. In a unitary state, planning is facilitated by a certain cohesion of public administration that is bound to direct all government policies or regulations towards the pursuit of well-identified and perfectly compatible objectives. In a federal state, things are different. Indeed, to the difficulties resulting from the heterogeneity and dispersion of economic forces are added the difficulties created by the multiplicity of governments, each one sovereign in its own field of jurisdiction. How then can we speak of unity and universality - which are indispensable qualities of any serious attempt at planning - in our plans?

For planning is, in the final analysis, an endeavour to bring to realization the desired and desirable economic development of a country. A plan is a more or less elaborate document that, after listing the objectives decided upon and evaluating the means available, tries to establish a rigorous connection between the means suggested and the ends sought. The essential characteristics of a plan, then, besides logic, are

* Mr. Parenteau is the Director of the Quebec Economic Advisory Council.

unity and universality, the latter being applied to the largest possible number of economic forces in public as well as in private industry.

Various Forms Of Planning Are Possible

We are thus led to differentiate between various forms of planning, according precisely to the greater or lesser extent of the plan's effects. It is understood that we mean here, in all cases, indicative planning, that is a form of planning which leaves a very large role to the free play of economic forces. This indicative planning, however, implies a certain degree of coercion on the part of public authority which prepares and proposes the plan.

A first method could be conceived which would be imperative only for the particular government which prepares the plan. Thus a plan for Quebec would limit its actions to the instruments already at its disposal, and to a coordination of the actions of various departments in order to insure a better cohesion of policies. The rest of the plan would then be, above all, a document of information, formulating a series of goals for the other economic forces. Such a procedure, while being very interesting, cannot be easily labelled as true planning. At most we call it "rationalization of governmental policies". We see immediately that in such a case the existence of a federal government does not create any major problem. The planning government will, however, have to adjust to the policies of the other government or to agree with them on the adoption of a common policy.

According to a second method, planning will be much more universal in that it will be binding on the whole of the public administration having jurisdiction over a given territory. Thus, in the determination of a choice of means for its fulfilment, the plan will incorporate a much wider range of instruments among which will be chosen those considered to be the most effective. In Canada's case, planning which would operate only in areas of provincial or concurrent jurisdiction would certainly be incomplete. And the same conclusion holds for planning related only to federal policies. Moreover, it would be difficult to conceive a provincial plan which would not take into consideration the policies of the other provinces, particularly of Ontario, whose economy is integrated in many respects with Quebec's whether in a complementary or competing fashion.

A Certain Similarity Of Conception Is Necessary Between
The Various Governments

One thus comes to the conclusion that one of the first requirements of planning in a country with a federal system is a certain similarity in approach. Whatever the form of collaboration adopted to regulate the relations between governments, it is imperative to speak the same language. I would go even further. The main governments of a country must draw their inspiration from a common or at least similar ideology as to the degree of participation of the state in the development of the economy. Of course, differences can still remain about a particular policy. This is the price one pays for a federal system.

But the systematic refusal to accept the policies enforced by the others can only lead to an impasse.

Once the idea is accepted that in a federal state the governments wanting to plan together must draw their inspiration from a minimum set of common principles, we must consider the requirements of planning at two different stages: that of the elaboration of the plan and that of its execution. The first implies essentially and mainly government intervention, since the state is the only economic agent having a sufficiently global vision of the desirable development to combine the different variables and to set up the broad goals. This activity, however, does not exclude the agents in the private sector: firms, workers or consumers' associations, etc. On the contrary! It is precisely the role of indicative planning to associate, in different respects, the various groups interested in the very process of the elaboration of the plan. This is deemed essential if the economic institutions in the private sector are to acquire a sufficient motivation to encourage them to follow the guidelines of the plan. The second stage, that of execution, relies on a much greater and diversified number of decision-making centres. In a free enterprise system, the major decisions in the fields of employment, production level, productivity, investment, rate of remuneration are made by enterprises acting singly or collectively. Moreover, those decisions are strongly influenced by trade union movements, so that the influence of the state appears to be, in most cases, quite secondary, not to say non-existent.

Access To Information: First Condition For Planning

The elaboration of the plan, whatever its components, presupposes the widest access to complete information. This information is spread across the economic system. It is represented, no doubt, by statistics of all kinds, but also by a treasure of experience and knowledge accumulated by each one of the economic groups. Access to this information is already a difficult problem to solve in a unitary state; private enterprises hesitate to release information which they consider confidential. In a federal system, the situation is further complicated by the fact that at least two governments expect to get that information from the same enterprises.

Indeed, one can imagine such a system in which the information at the disposal of one of the governments would also be accessible to the other. Technically, this is simple enough when it is a matter of non-confidential information, but much more complicated in the other case. At this point, moreover, we must distinguish between statistical information and administrative information, that is, the wide information gathered by the various government bodies in the enforcement of some particular laws. That kind of information is far from being negligible in a planning perspective. It is already difficult to transmit it from one department to another inside of the same government, and all the more so in the case of another government. It would take a substantial change of attitude to hope that, in the near future, we could expect a free circulation of all pieces of

information entering into the composition of a plan, but the progress realized in this regard, in the last few years, indicates that in the distant future this objective could be reached.

Collaboration Between Governments: Necessities and Limits

In the perspective of the elaboration of a really complete plan, it is necessary to consider a wider cooperation in the preparation of new policies. In the past, consultation between governments has already taken place in a few cases when it was necessary to work out the last details of a program.

Moreover, on occasion, consultation was obviously necessary when the program was on a shared-cost basis. Fortunately, we are past the time when Quebec was forced, for fear of depriving the province of important sources of revenue, to participate in the so-called joint programs entirely conceived and prepared in Ottawa!

But there are numerous fields of exclusive jurisdiction for one government or another. For instance, in a plan worked out exclusively for Quebec, we might wonder whether federal policies would be taken into account at all. If such is not the case, will the plan prepared by the provincial authorities be allowed to set guidelines within its jurisdiction for the federal government? Will it be allowed to propose quantitative objectives?

We know that, at the execution stage of the plan,

complete unity of action cannot be imposed on all the economic institutions. We must run the risk that certain reactions would not conform to the directives of the plan. But this concerns essentially private enterprise in all the areas in which it retains freedom of choice.

Can we say the same about public enterprise? A government, contrary to common belief, is not a homogeneous institution in which all realizations are compatible. Composed of various specialized branches called departments (or commissions, or corporations, etc.) a government is often led to contradict itself, without realizing it, and to exercise activities which cancel each other. What we have just said is even more true in the case of different governments. How can we insure then that there will be a satisfactory coordination in the execution of the policies? We know that the plan itself is a coordinating factor since it is meant to underline interrelations between phenomena, incompatibilities in policies, etc. Here we see the importance of preparing a global plan which will not neglect any important aspect. If the plan is well made, we can at least rest assured that the conditions of an efficient collaboration will have been clearly stated.

When it comes to translating these elements into practice, good-will is not enough. We must consider setting up permanent mechanisms of cooperation between governments. It is essential that the will to cooperate does not appear

only on the eve of a major disaster when it becomes evident that harmony of action has become a necessity. In other words, it is necessary to institutionalize relations between governments and this at all levels of administration.

Besides, we should not imagine that the sharing of the jurisdiction between two levels of governments in the economic field presents only drawbacks.

In terms of execution this system makes it easier than in unitary states to adapt the measures to the need of the regions because the provincial governments are not regionalized central administrations, but real decision-making centres capable of making their own decisions and of disposing their own resources.

Such are some of the aspects of planning in a federal system. A careful study of the various elements used in the elaboration and the execution of a plan for economic development allows us to conclude that if, in a market economy, planning can be considered as a major challenge, the problems are multiplied in a federal state. To the problem of the sharing of economic power between a multiplicity of groups of various importance or motivation, is added that of a possible disparity between interventions of governments. There is only one conclusion: if we really want to follow the road to planning and to keep federalism, there is only one way out - cooperation.

Quebec's Demands and the Problem of Sharing Fiscal Resources

Robert Bourassa*

It is not necessary to be a prophet to predict that among all the possibilities that are open to it the province of Quebec will choose a special status, consistent with its own characteristics, within a renewed Canadian confederation. In fact, Quebec has already progressed in this direction by choosing to levy and collect its own taxes, to withdraw from a number of federal-provincial programs in return for fiscal equivalents, and to use fiscal policy as an instrument of economic and social policy. Furthermore, all of Quebec's political parties agree that the affirmation of Quebec as an entity per se is something to strive for since its basic needs cannot be deferred indefinitely in the name of the uniformity which the central government is proposing to the ten provincial governments.

In this light, what type of fiscal reforms are to be envisaged between the governments of Ottawa and Quebec to insure that Quebec will grow according to its needs?

If we choose to review first the negative aspects of this problem, we can discern three main points which roughly cover the problem of a new distribution of fiscal resources in Canada.

* Mr. Bourassa is the Member (Liberal) from Montreal - Mercier in the Quebec Legislature.

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1. First, it would appear that it is not possible to increase substantially the Canadian taxpayer's rates, without seriously hindering economic growth. Thus, too large an increase in the income tax of private citizens would encourage even more emigration of our best brains to the benefit of foreign countries, and more particularly of the United States. This was pointed out by the federal Royal Commission on Taxation (Carter). Similarly, a tax increase on corporate profits would further weaken the competitive position of Canadian companies whose operating costs have a tendency to be higher than those of American concerns. Such a fear is well-justified when it is recalled that exports play a major role in the Canadian economy. In fact, the proportion of exports to the Gross National Product is some twenty per cent in Canada, compared with only five per cent in the United States.

Furthermore, when the 11 per cent federal tax on manufactured goods and the 8 per cent tax on retail sales in Quebec are added together, it is to be feared that the saturation point has already been reached in which the accrued taxes are beginning to contribute to inflation and to the detriment of general welfare and equity.

2. Just as the proximity of the United States must be taken into account when modifying Canadian taxation, so it is necessary to consider the fiscal system of other provinces, notably that of Ontario, if Quebec's taxation is to be reviewed. The Bélanger Commission on Taxation in Quebec insisted on this point throughout its report emphasizing that a heavier fiscal

burden could only be detrimental to the growth of Quebec and beneficial to its neighbour. Even if the establishment of an independent state caused borders to be erected between Quebec and its neighbours, it would still be necessary to harmonize the taxation of companies from one country to the other, so as not to place Quebec's industries in a detrimental position in comparison to the competing industries of bordering countries. This can best be illustrated in the European Economic Community where constant efforts are being made to develop a uniform plan of taxation of national industries throughout the Community.

3. On the other hand, it is a fact that the expenses of provincial governments are increasing much faster than those of the Federal government. The federal Minister of Finance, Mr. Mitchell Sharp, admitted it himself during a speech to the Canadian Tax Foundation, on April 26, 1967, when he said that the former would increase by eight and a half per cent while the latter would only increase by six and a half per cent for the period from 1966 to 1971. The gap would be even greater, if the sums ear-marked by the Federal government for projects under provincial jurisdiction were subtracted from the figures mentioned by the federal Minister of Finance and added to the spending of provincial and municipal administrations.

These are three basic considerations that will have to be taken into account when making fiscal rearrangements between the governments of Quebec and Ottawa. The mere fact of mentioning them already unmasks some weak points in the recommendations of the Carter Commission on Taxation, particularly with respect to

those recommendations on corporate income tax and the sales tax.

Personal Income Tax

The Carter Report, as we all know, recommended that the Federal government should not allocate a greater share of the personal income tax to provincial governments. It is understandable that the Federal government should wish to retain part of this tax, as a means to control economic activity, at a time when the other means of leverage, such as monetary and budgetary policies, are becoming less and less effective. In fact, the government's monetary policy is largely dependent on that of the United States, as we noticed recently when the proximity of the United States forced the government to align its interest rates to avoid paying a surtax on loans contracted in the American market. Furthermore, Ottawa's budgetary policy has a diminishing influence on the nation as a whole as the proportion of federal investments dwindles when compared to that of provincial and municipal administrations. The former only represents twenty per cent, while the latter constitutes eighty per cent of public investments in Canada.

In order to retain its present share of the personal income tax, the Federal government could, with respect to Quebec, take into account an additional argument by referring to the equalization payments which will bring Quebec about two hundred and sixty million dollars in 1968. To this figure must be added the "special equalization payments" made as fiscal compensation resulting from the abolition of certain joint programs. However, it must not be concluded from this argument, which

Quebec should certainly keep in mind, that the Federal government should have to retain fifty per cent of this tax in order to exercise a controlling influence on the Canadian economy when it could reach the same goal by only retaining twenty-five or even twenty per cent of this tax.

Quebec must certainly insist on receiving a bigger share of the personal income tax since it is the fastest growing tax due to its progressive rates and its high yield of 1.6 times the increase in Gross National Product. However, it is not indispensable for Quebec to obtain all of the personal income tax since the Quebec government could very well retain a considerable portion of this tax and adopt or adjust it to its personal economic and social needs, while at the same time letting the Federal administration have the smaller share. This would not present insurmountable administrative problems. Quebec's last budget gave us a very good example when the government unilaterally discontinued the basic abatement for children entitled to family allowances in order to inaugurate its own system of family allowances.

Corporate Income Tax

Similarly, the Carter recommendations concerning the corporate income tax are not acceptable. Quebec cannot give to Ottawa the total sum of this tax which the province could use as a basic tool for its own economic development. It is a known fact that Quebec's economy, compared to that of Ontario, suffers from weaknesses caused by a less well-organized secondary industrial structure and by an unemployment rate almost twice as

high as Ontario's. The economic priority for Quebec is to close these gaps; and the corporate income tax is precisely, if not the only, means to remedy such a situation by boosting the productivity of industry. The citizens of Quebec cannot let the Federal government take charge in their stead and carry out the necessary reforms needed for Quebec's economic renewal since they have no guarantee that the central administration would, in the event of conflicting regional interests, give priority to their needs in the mapping out of its fiscal policy. On the contrary, they should rely on themselves and, in this case, on a much greater share of the corporate income tax in order to be able to contribute to the efficient strengthening of their economy.

Indirect Taxation

Nevertheless, it is necessary to make a distinction, with respect to fiscal measures affecting industry, between the proper allocation of fiscal incentives and a tax on production. If it appears necessary in the first instance for Quebec to have a large autonomous field of action, it would be detrimental for the province to install unilaterally in the second instance a system of its own. Therefore, if the tax on manufactured goods was to be discontinued elsewhere in Canada, its application in Quebec would be detrimental to the economy and would mean more work for the administration. Similarly, Quebec alone could not decide to impose a tax on the added value however useful or necessary. Quebec's economy is too integrated to that of its neighbouring provinces to be able to submit its tax policy to a radical transformation without risking serious damage.

The Carter Commission proposed to abolish the manufacturers' sales tax by switching it to retail sales and suggested that the provincial governments be put in charge of its collection. Such a change would mean that Quebec, for example, would have a sales tax of fifteen per cent. It is doubtful, for political reasons, that such a proposal would be agreeable to provincial governments which would have to present this to their people as an odious tax having all the trimmings of a surtax. Furthermore, the taxpayers would not accept without fighting back a fifteen per cent tax that would be applied, for the sake of equity, to services which are, with a few exceptions, exempted from a sales tax - even if they are used in a proportionately larger way by the richer members of society. It is interesting to note that the Minister of Finance, Mr. Sharp, in his previously mentioned speech, did not include the eleven per cent tax in his list of the twelve proposals of the Carter Commission which the Federal government is studying prior to its meetings with representatives of various groups by October, 1967. Obviously, as indicated by the Minister, the proposals relating to this tax present less difficulties; it is, however, significant that the Federal government is not interested for the time being in getting advice on this subject.

In any case, the tax on manufactured goods is not among the taxes which it would be advantageous for us to control either partly or fully, even if the Prime Minister of Quebec made public his intentions to do just this during a debate in the Assembly on December 14, 1966. By swapping another source

of revenue for this one during federal-provincial negotiations, Quebec would play into the hands of Ontario whose industrial community is much more developed, and it would mean that Quebec citizens would pay taxes to Ontario each time they purchased goods imported from that province. As far as giving the Quebec government part of this tax without letting Quebec administer it, which is very hard work, the practical result would be to grant Quebec funds dependent upon the annual growth of the yield of a tax whose rates could not be increased due to interprovincial competition.

On the contrary, Quebec has the right to insist on collecting taxes now handled by the Federal government on such goods as alcoholic beverages, tobacco, and some other luxury goods. We refer mainly to goods which are consumed locally and are already subjected to provincial taxes whose levying is simple and whose yield is appreciable. This would mean that Quebec would, therefore, recover nearly three hundred million dollars in 1968. Apart from its immense financial needs, it is vitally important for Quebec to control by affecting consumption the fiscal means to influence the province's social and economic pattern. For instance, should Quebec decide to moderate income taxes by levying a tax on luxury items, so as not to discourage savings, it should be able to do this within the limits defined by interprovincial competition to the benefit of more productive investments.

Conclusion

To sum up, Quebec must look, in its discussions with

Ottawa on a re-evaluation of the sharing of fiscal resources, for substantial revenues consistent with its own needs and instrumental to its social and economic activity. The existence of new sources of income would not necessarily mean an increase on the tax burden of citizens, but a more equitable sharing of taxes and of the fiscal balance between the two levels of government according to their respective needs. In fact, it can be stated that fiscal resources are not lacking in Canada when the federal administration is looking for new ways to allocate funds to the provinces, while provincial governments are accumulating deficits without even being able to deal with the pressing needs of their people. It is evident that public opinion in Quebec wants a new sharing of revenue sources consistent with the responsibilities of its provincial government. Such an arrangement would ensure that that government would get a larger part of direct taxation from the personal and corporate income taxes and a wider access to some indirect taxation, without, at the same time, having to abolish the equalization system now in force. But Quebec wants more than money. It wants the power to be master of its destiny. Increased financial resources would be too little for Quebec if it did not have the means to change its fiscal system in the context of its social and economic situation. This is why it appears unthinkable for Quebec ever to let Ottawa levy some of its taxes in the ways the Carter Report suggested. If this should come to pass, provincial governments would in fact give up their bargaining power and their ability to adapt the fiscal situation to their

own social and economic needs, without obtaining the approval of the Federal government. Any administration having given up control of its taxation program retains only a theoretical right to act and is bound to be subjected to the decisions of the tax collector. Therefore, it is easy to see from these few considerations the seriousness of the problem arising between Ottawa and Quebec for a more equitable sharing of fiscal resources and powers. The problem for Quebecers is to find out whether or not they can, within the present political framework, find the means to build a society to fulfil their needs and their aspirations. In this context the fiscal problem is at the root of most of the differences between Quebec and Ottawa. It will also be necessary to gauge the frame of mind of the governing bodies in Ottawa concerning the unity of the country, and the will and the speed with which they will devote themselves to resolve this problem.

French Canada's Estates-General

Rosaire Morin*

In the present Canadian and world situation, what is the position of the Estates-General? Canon Lionel Groulx, honorary president of the Estates-General, supplied the answer: "It is the plenary meeting of a nation whose right and duty it is to gather from time to time for the purpose of self-examination and reflection on its destiny." This plenary meeting is primarily called for the purpose of expressing the general will of the French-Canadian nation. The delegates will consider the constitutional, political, economic, and social future of the nation. They will consider with, we hope, the greatest detachment and lucidity what institutions are necessary in order to provide our national community with a full life.

As true representatives of a people whose identity is an historically established fact, the delegates to the Estates-General of French Canada will act as the voice of conscience for a nation which, like any other nation, has the right and duty to be itself.

From that point of view, the future must be defined

* Mr. Morin is Director of the Steering Committee (Commission Technique) of the Estates-General.

in terms of a national doctrine, outlining major objectives. The political and judicial institutions essential to our fulfilment must be determined.

The Forthcoming General Assembly

What is the composition of the Estates-General? A total of 1,620 district delegates represent Quebec. They voice the problems and aspirations of the common people. In addition, there are 600 representatives of province-wide associations, 311 of whom had already registered by May 23. These representatives of minority groups will add a new dimension to the setting of future policy. Lastly, 425 representatives of French-Canadian minority groups will be instrumental in establishing a dialogue among all the members of our nation.

The national assizes of the Estates-General will be held next November. In preparation, 14 district meetings will be held in September and October, at which important preliminary discussions will take place. This preliminary background work will enable the plenary meeting to accomplish a great deal.

The provisional general committee made ten regional trips just prior to the preliminary assizes in November, 1966. With the help of resolutions and briefs submitted by the districts, some 26 documents were studied at the preliminary assizes. From this meeting emerged a number of precise ideas, guidelines and expressions of the popular will which are now proving useful in the preparation of new documents. These documents, containing precise, practical ideas and an expression of the

majority will, are to serve as a common denominator expressing the conscience of the French-Canadian nation.

The 14 district conventions will certainly be necessary in order to bring this work into focus. The purpose is to find ideas which will unite French Canadians rather than divide them - the latter situation usually resulting from the use of certain words or formulae which create misunderstanding.

A Constitution to Meet Our Economic
and Cultural Needs

At the national assizes in November, 1967, all aspects of French life in Canada, and especially in Quebec, will be studied. Cultural factors and, more specifically, the status of the French language will be considered by the delegates. The communications media, radio and television, the rapport among French Canadians and the relationship of Quebec to the French-speaking world will have to be realistically considered.

For the first time, approximately 2,500 representatives of French Canada will study: social problems - upward social mobility, unemployment, manpower, housing and the family, and immigration; economic questions - natural resources, regional development in Quebec, agricultural development, and the more effective use of harbour facilities in Quebec; and, in general, the means of establishing a healthy French-Canadian economy.

Basing their study on an ensemble of facts, the delegates will attempt to find concrete solutions to these questions.

As everyone knows, economic values influence political power; but as any student of political science well knows, the power of political decision strongly influences economic growth.

Here, we are at the root of the French-Canadian problem, i.e., the political and constitutional question. Should the role of the Lieutenant-Governor as Ottawa's servant be perpetuated? Should spending power in all areas be left to Ottawa, as is currently the case? Does Quebec possess the taxes it greatly needs? The Quebec government will have to make major decisions concerning New Quebec, Labrador and the federal district. Lastly, should we reinstate the Constitution of 1867 which has been violated so often over the past 25 years, or should we develop a new constitution for Quebec and for a new Canadian community?

The delegates to the Estates-General must not fool themselves. This is no little vote; nor is it any small reform of little consequence. As Canon Groulx stated succinctly: "It is a great deal more than a political choice; it concerns the future of a nation and it boils down to the fundamental decision: to be or not to be."

Therefore, at the outset, the Estates-General will not reject any option which might be considered necessary to the fulfilment of the nation. For example, independence might well go hand in hand with the concept of a "Canadian community".

All options are possible. Using, as a starting point,

the many practical suggestions which will be proffered as solutions to our daily problems, we will be better able to decide which political status is necessary for our national fulfilment.

As everyone knows, French Canadians are peace-loving in the fullest sense. They aim for neutrality in international conflicts. They are ready to collaborate wholeheartedly with partners willing to think of them, henceforth, as equals. The delegates to the Estates-General must, therefore, sketch the broad lines of solutions concerning our future. At the same time, they must take into account the institutional, judicial and political consequences that any choice will entail for future generations.

The Estates-General and the Quebec
Government

What will be the nature of the relationship between the Estates-General and the Quebec government?

Let us look, first of all, at the joint declaration made by Prime Minister Daniel Johnson and Opposition Leader Jean Lesage. After stating that "French Canada today is at the threshold of a major turning point in its history" and that "by nature, the responsibility for initiating institutional reform lies with Quebec", Mr. Johnson and Mr. Lesage emphasized, last April 12, that, being truly representative, the Estates-General "could be of inestimable help to parliament when the time comes for making a pronouncement on our constitutional future'.

The Estates-General were really necessary in order to obtain a popular consensus. Mr. Johnson and Mr. Lesage both recognized this necessity. As a matter of fact, although there are many issues at stake in the regular provincial elections, they do not give the members of the Legislature a mandate to change Quebec's constitution. Regularly elected members have the right to legislate according to and within the limits of this constitution.

Having said this, everyone knows that the Parliamentary Committee on the Constitution has been re-established by the present government in order to carry on and expand the work begun by its predecessor. The Quebec government is getting ready for constitutional changes. The Estates-General certainly intends to collaborate with Quebec authorities to see that these impending changes correspond with the hopes and needs of the French-Canadian nation.

It should be said that the November assizes, which will study practical problems, will undoubtedly not allow sufficient time for elaborating final proposals. As a result, there will likely be additional assizes in March, 1968 to complete the formal work of the Estates-General. The resolutions will then be forwarded to the Parliamentary Committee on the Constitution.

A "dialogue mechanism" will also have to be established between the Estates-General and the government. It will not be sufficient merely to send the Committee on the Constitution

pious recommendations which it, in turn, might then reject. The Estates-General will have to engage in genuine dialogue with the government, in the national interest.

Certainly, it is the government's business to govern. The function of the Estates-General is to institute a vigorous dialogue between the nation and the state. In any case, the enormous amount of work accomplished by the study commissions, the regional sittings, the debates at the national assizes and the documents which will result, will all help to create a favourable climate for an eventual constituent assembly. Such an assembly is already written into the Quebec government's agenda.

Hence, Quebec will have a constituent assembly. It already appears that this assembly, which will be legal in nature, would have to consider seriously the resolutions proffered by the Estates-General of French Canada. Thus, after some intermediary stages have been completed, the plenary meeting of November 1967 will help in bringing about a genuine constituent assembly: THE VOICE OF THE PEOPLE.

It is about time we took note of the following: in this country "democracy" and "democratic" are words used frequently. But we are one of the few civilized peoples in the world who have never approved our own constitution.

The new constitution by which the French-Canadian people, and especially Quebecers, will live will have to be submitted to the constituent assembly, and, following that, to

the people for approval by referendum or plebiscite.

What Will Happen to the Estates-General?

Let us assume that the constituent assembly and the referendum both come to pass in the natural course of events. In that case, the state's response to the nation's wishes will have been a positive one. The nation will have begun the march of progress towards a true, national liberty. In that case, the Estates-General will have accomplished its task, and the thousands who helped in furthering its objectives will be consigned to a well-earned posterity.

But if the state's response were not sufficiently positive, if politicians still continued to hedge, if innovations failed to ensure the fulfilment of the French-Canadian nation, then the Estates-General would have to start considering a new program. The Voice of the People must be heard in this country, if the people are to enjoy the full expression of their way of life. The people have not forgotten that "the Voice of the People is the Voice of God". It is high time our people acquired the civic dignity which is their right. In other words, it is high time our people stopped being second-class citizens in their own homeland. National maturity is at hand. The stage is set for dialogue, for truth and for self-affirmation on behalf of progress in Quebec and the complete fulfilment of our nation.

The Parliamentary Committee On The Constitution

Jean-Jacques Bertrand*

The Parliamentary Committee on the Constitution was unanimously appointed by the Legislative Assembly on June 7, 1963, with the task of determining the aims to be pursued by French Canada in the revision of the Canadian constitutional order and the best means of attaining these aims. This mandate, renewed at each session of the Legislature, was extended, at the beginning of the present session, to deal with the internal constitution of Quebec and the calling together of a constituent assembly.

Our Committee will be entrusted henceforth with the task of bringing together in a harmonious whole the various elements of the internal constitution of Quebec, and will suggest any new provisions which might be included, in particular those which relate to any future changes in that constitution and to the protection of minorities. It is conceivable that Quebec could adopt a status which would be different from that of other provinces, to the extent that it would judge appropriate. The Committee will also have to study whether or not there is need to set up, in lieu of the Legislative Council, a body which would represent intermediary

* Mr. Bertrand is Minister of Justice in the Quebec government.

bodies, with power structures answering the needs of our time.

The question arises also whether there is not ground to make provision for the setting up of a protective mechanism, in order to ensure that no measure aimed at amending the Canadian or the Quebec constitution can be adopted, just as any other bill, by means of a simple parliamentary majority. This mechanism might assume various forms according to whether or not there will be a second house, but all these problems will have to be studied in relation to each other by the Committee on the Constitution.

The Committee will also study the best means of forming and convening a constituent assembly, if it judges such a move appropriate, in order to deal with the problem of the internal constitution of Quebec as well as that of the new Canadian constitutional order. Usually a constituent assembly is given all powers to adopt a constitution, although in most cases the latter must also be ratified by means of a referendum before it is enacted. However, in the present state of our public law, no measure is legal, if it is not voted on by both houses and sanctioned by the Lieutenant-Governor. In theory, the decisions of the constituent assembly would not bind the Legislature. In practice, however, the work of the constituent assembly, if the latter is truly representative, would be cloaked in such solemnity that morally, if not juridically, the Legislature would have to endorse its conclusions.

Meetings

Since its inception, the Parliamentary Committee has held about fifteen public meetings during which it has heard and questioned individuals and bodies who have made submissions.

The research committee, made up of seven of the fifteen members of the Committee, has had for its part about ten, closed, working sessions, at which it sometimes enlisted the assistance of experts in Canadian constitutional law, in international law and political economy to enlighten its members on the technical aspects of the various questions that have been brought to the attention of the Committee.

Submissions to the Committee

The Committee has been eager to listen to public opinion. Its members have received about forty submissions from individuals and bodies interested in the constitutional future of French Canada and Quebec. These submissions constitute, on the whole, a very valuable contribution to the study and solution of the problem. The interest shown by young people reveals on their part a marked preference for a general solution of the collective problems.

Among the petitioners who came before the Committee, only one declared himself completely satisfied with the existing Canadian constitutional order. Several noted regretfully the absence of legislation capable of ensuring the respect of human rights and fundamental liberties at all levels of government. Most regretted the fact that the Canadian

Constitution does not define the bi-cultural character of the Canadian population and provides no special constitutional guarantee to French Canadians of provinces other than Quebec. Several submissions deplored the fact that the division of powers between the federal government and those of the provinces is not clear enough to enable the people to decide which government should assume the main responsibility in a given field. Because of this situation, they deplored the fact that various governments frequently refrained from acting for the people, whose rights it is their mission to defend and protect.

Most petitioners did not doubt that the French Canadians constitute essentially one nation, enjoying as such all the rights recognized by international law and practices. Many perceived the fact that this nation, representing a majority of more than 80% in the area of Quebec, but being a minority of 28% in the whole of Canada, finds itself in a situation sui generis, probably unique in the world. They concluded, however, that this situation cannot be extended indefinitely, without creating serious upheavals, if Quebec is to be used as the basic yardstick for the determination of the degree of autonomy which all the provinces of the Canadian federation should enjoy.

The fundamental options emanating from the recommendations of the petitioners can be summarized in the

following logical order:

1. Increased centralization in matters of education and of economic policy was advanced by some petitioners.
2. The constitutional status quo was recommended by a single petitioner.
3. A decentralization ensuring an identical but more autonomous status for all provinces, particularly by granting them the exercise of wider powers in everything which is related to local and private affairs, notably in matters of social security, marriage and divorce, incorporation of companies, rulings in respect to business, industry, labour, etc. The residual power should be granted the provinces by reason of this formula. Furthermore, given this hypothesis, a new Constitution could make the provinces responsible for the naming of the Lieutenant-Governor, of all judges of provincial courts and senators, could make the Court of Appeal in each province the Supreme Court for all cases bearing on provincial laws, could abolish the federal power of reservation and disallowance as well as the general power of spending and the declaratory power of the federal government, limiting to periods of crisis the use of its

general power of legislating for "peace, order and good government". One could also establish a constitutional tribunal whose members would be appointed by the central and the provincial authorities.

4. A special regime for Quebec which could be adopted gradually, without granting that province an official status distinct from that of the other provinces, either by encouraging the federal government itself to legislate differently for Quebec, or by delegating power to Quebec on certain federal matters or even by advocating in certain fields, special dispositions similar to those which were adopted in the case of the pension fund.
5. A special, official status by virtue of which Quebec alone would hold certain powers which the other provinces would not be interested in exercising, e.g., in various fields representing a vital interest for the French-Canadian community, notably in matters enumerated in paragraph 3 above. One must note, however, that few petitioners took time to define clearly the nature of the special status which Quebec should enjoy within the Canadian federation.
6. The thesis of associated states. By virtue of this option, Canada would be composed of two sovereign states, an English-speaking state

grouping the nine English provinces and a French-speaking state, Quebec. We have here a solution of the "Austro-Hungarian" type. This arrangement could be encompassed within a federal system (in which the two Canadian states would exercise equal prerogatives) but which would be dependent for its financing on the will of the two associated states.

7. Independence or sovereignty of Quebec. In the eyes of its adherents, this hypothesis does not exclude the establishment of a customs union or of an agreement on free trade with the rest of Canada.

The linguistic question held the attention of a good number of petitioners, some suggesting that the Constitution recognize in the whole of the Canadian territory an equal status for the two official languages of Canada, others favoring a territorial solution to the linguistic problem, that is to say a central bilingual state, shouldered by unilingualism in Quebec. Others suggested that the provinces, which have French minorities proportionately comparable to the English minority in Quebec, recognize an official status for French, at least on a regional basis within these provinces.

On the functional level, one discovered a certain consensus on the recommendations of the petitioners. As an example, let us mention, within the present constitutional framework, the elaboration and the application of an integrated social policy by Quebec, a labour policy, a policy of selective

recruiting and integration of New Quebecers in the French-speaking society, a linguistic policy ensuring the primacy of the French language in all socio-economic activities in Quebec, and a policy of technical cooperation and cultural exchanges with the French-speaking community of nations.

It goes without saying that the summary of the preceding fundamental options has acquired a very academic ring. The aim of the Committee is not to decide on purely theoretical options, but rather to propose practical and concrete solutions, adapted to Quebec's contemporary needs. The Committee, therefore, will continue to seek as wide a consensus as possible on the choice of options in order that it can state clearly what Quebec wishes, and what the French-Canadian nation wishes.

Research

The Parliamentary Committee has supported several technical studies undertaken by the Institute of Public Law of the University of Montreal and by specialized personnel of the Department of Intergovernmental Affairs. The latter placed at the disposal of the Committee in November, 1964, a detailed study on the share of Quebec in the spending and revenue of the federal government for the fiscal years 1960-61, 1961-62, 1962-63. This document was presented to the Legislative Assembly and made public on that occasion.

The Committee has already looked into about fifteen technical studies compiled under the aegis of the Institute of Public Law. About ten additional studies are in the process

of being completed. They should be in the hands of the Committee in the near future. These studies deal with several questions of public law involving political implications for the future of the Quebec society. They deal in particular with immigration, land utilisation and territorial integrity, foreign affairs, radio and television, implicit and residual power in Canada, the general power of spending and the declaratory power of the Canadian Parliament, fiscal powers, constitutional tribunal, judicial organization, labour relations, local and interprovincial commerce, incorporation and the regulations governing enterprises, etc. These technical studies, which will all be published eventually, have already proven extremely useful to clear the way, to clarify certain fundamental notions and indicate how some anticipated solutions might be applied concretely.

Present Prospects

The members of the Committee have studied the past, the present and the future of the French-Canadian people. Considering the complexity of the problem and the multiplicity of factors which determine the collective outlook of a people, the mandate of the Committee is of a very delicate nature. The Committee has been unable until now to undertake the drafting of a precise constitutional program which might be acceptable to the Quebec population as a whole. At present, its work is far from being completed. At best, it would be in a position now to present a preliminary report, underlining the essential principles of the problem which it has had to

study, and outlining, in a very general manner, possible solutions in keeping with an essentially dynamic political situation.

The constitutional changes which the Committee will be called upon to study more closely can be classified in four main categories of reform:

1. A clarification of fiscal powers, in relation to the tasks which the Government of Quebec must carry out.
2. Cultural equality between the two Canadian linguistic communities, within federal institutions and within the governments of the interested provinces.
3. A new distribution of powers between the Government of Canada and that of Quebec, which will allow the latter to assume fully its mission as the main homeland for French Canadians.
4. The official recognition of the right of the Government of Quebec to conclude international agreements, after consultation with the Government of Canada, in matters of provincial jurisdiction and to participate in these matters in the work of the Specialized Agencies of the United Nations.

In revising the text of our constitution, we should also seize the opportunity of expressing in contemporary terms

the main Canadian aspirations, the legal administrative framework and the division of powers between the two levels of government. We should eliminate in particular from the preamble of the Constitution all references to past needs and interests of the 1867 period, as, for example, "the interests of the British Empire". We should also eliminate from this document all provisions which have become outdated through constitutional practice, as, for example, reservation and disallowance and the temporary stipulations which referred to certain practical situations facing the governments at that time, such as the transfer of property. We should then have a fundamental law of which we would be proud, just as other countries do.

The Parliamentary Committee on the Constitution will undertake the next stage of its work with confidence and in a spirit of calm deliberation. The fact that this stage will require on its part more discretion than the preceding stage will bear witness to the seriousness with which it will accomplish its task. One thing is already assured: this is the first time in the history of our people that the constitutional policy of Quebec will be the result of cooperation between political parties represented in the Legislature, and will rest on scientific research rather than on purely instinctive and sentimental considerations.

The Department Of Intergovernmental Affairs

Claude Morin*

If one had to judge it according to the current norms of modern public administration, the Department of Intergovernmental Affairs would seem quite strange. Its budget is extremely small, compared to those of other Quebec departments. It has a small staff, its administration is relatively simple, and it occupies less office space, in Quebec, than the administrative service alone of an average-size department. However, one recalls the immediate reaction of certain Federal M. P.s when the Prime Minister of Quebec introduced the bill which was destined to institute this new department. Undoubtedly wishing to guard against any eventuality, the federal spokesmen thought the moment opportune, even before knowing the contents of the bill, to make anxious pronouncements on the inviolability of parliamentary bills and on what they thought was another manifestation of Quebec's international ambitions.

That the institution of such a small department should arouse such a great interest, not to say anxiety, in people preoccupied with many other problems, would be difficult to understand, even unexpected, if one were not to place it in

*Mr. Morin is Deputy Minister of the Department of Intergovernmental Affairs.

the context of modern Quebec's effort towards consolidation and development. For, viewed in this light, the new department takes on the fatal image of a symbol. Under the immediate responsibility of the Prime Minister, and in close collaboration with the other Quebec ministers, it has, in effect, a general mandate to contribute directly and actively in the new definition, both constitutionally and politically, of the Quebec of tomorrow. When one thinks of the federal-provincial problems that this new definition of Quebec has raised, one is no longer surprised by a reaction which sees in the creation of a new department a further step in Quebec's political and constitutional escalation against the status quo.

The Department of Intergovernmental Affairs has been established, essentially, for four reasons:

- to enable Quebec to occupy fully all those areas relating to its jurisdiction by entrusting to a single department the responsibility for studying and proposing the most effective course of action possible;
- to hasten a solution to the problem of Canada's Constitution by supplying Quebec, the province most interested in the question, with co-ordinated and creative machinery;
- to define the intergovernmental policies of Quebec and to co-ordinate the methods of communication with other governments;
- to put an end to the former dispersal among various departments of administrative responsibilities for Quebec's actions outside the province, and particularly for Quebec's dele-

gations abroad and agreements with France in the fields of education and culture.

In other words, in the same way that it was natural and necessary for Quebec in 1961 to establish a Department of Federal-Provincial Affairs, it had become natural, necessary and opportune, in 1967, to establish a Department of Intergovernmental Affairs. The latter is only a logical extension of the former, and there is between them an obvious administrative and political affiliation as is proven by the unanimity which accompanied the debates on the subject in the Legislative Assembly. The evolution of modern Quebec made it obvious that to the area of federal-provincial relations must sooner or later be added the field of foreign relations; for, in asserting itself, Quebec has not only confirmed the traditional economic, social and political aspirations of its people, but has discovered that its fundamental cultural interests, taken in the broadest sense, lead it towards a contact with peoples of the world, particularly those of the French language.

In short, as the Prime Minister declared before the Legislative Assembly, the government of Quebec, in establishing a Department of Intergovernmental Affairs, wanted to assure the unity of its policy towards governments, departments and agencies outside the province. This initiative is not meant to give Quebec rights that it supposedly does not have, but rather to permit it to exercise more fully and more efficiently those which it does have. This initiative must be placed in the context

both of current Canadian federalism and of the eventual change that Quebec is trying to achieve. It is first of all, therefore, an administrative gesture redistributing various functions within the government. Thus, we are confirming practices that had gradually begun to be established in the Department of Federal-Provincial Affairs, especially during the last two years, i. e., since the signing of agreements with France and the establishment, in August 1965, of an interministerial Commission for Quebec Foreign Relations.

The transformation of the Department of Federal-Provincial Affairs has given certain people the impression that the Quebec government would henceforth neglect the area of federal-provincial or interprovincial relations in favour of its foreign relations. It is because of this that the idea, or rather the whim, has originated that Quebec has just set up a "Department of Foreign Affairs".

In reality, the activity of the new Department has a bearing on two large areas: federal-provincial relations and foreign relations. In this way, the Department will continue to be responsible for constitutional, fiscal and administrative negotiations with the federal government and the other provincial governments. The Prime Minister has even announced the Government's intention of seeing that the Department will be better equipped than it is at present to supply all Quebec departments and agencies, which participate in the elaboration of policies having federal-provincial implications, with all the technical services which they might need.

The meetings between representatives of the federal and provincial governments can thus be better organized and followed up more effectively. In the majority of cases, it would even be desirable for a member of the staff of the new Department to attend these meetings, either as an advisor, when the conferences are of a political nature, or as an observer, when they are of a technical nature. Now, if one remembers that each year there are in Canada more than a hundred meetings of this kind, at the prime ministerial level as well as at the ministerial or the civil service level, one can see immediately the amount of work that the new Department must do in the preparation for and the running of these conferences. This is even more the case because the task of the Department is not restricted to attending the different meetings; before each conference it must analyze the agenda, supply documentation if necessary, make preparations for the meeting, and co-ordinate the political positions, taking into account such circumstances as the place, time and people involved. Finally, after each conference, it must study the course of the discussions and supervise the necessary negotiations, either directly or by the representatives of departments better placed than itself to discuss a particular question with the representatives of other governments.

All this work obviously demands the full co-operation of other departments. Fortunately, at the present time, this co-operation is completely assured. Everybody knows that if one department is responsible for the policy of highways' maintenance and another for social policy, it is quite normal for

another department to be responsible for intergovernmental policy.

Naturally, it is often difficult to co-ordinate the working of several departments and to integrate several projects within the framework of a general intergovernmental policy. Therefore, the Department of Intergovernmental Affairs strives never to elaborate alone policies which must be discussed at federal-provincial or interprovincial meetings. In order to establish these policies it has always ensured the presence and the participation of representatives of the departments concerned. In this way, the new Department hopes to be able to take into consideration the opinions of each of these and through persuasion, to bring about an understanding of why the proposed policy exists. In fact, it is quite remarkable that, with the passage of time, the various departments understand increasingly the orientation of the Department of Intergovernmental Affairs, and themselves take it into account in their relations with their counterparts in the federal government or in the other provincial governments.

It can, therefore, be seen that the new Department has only and will only have direct administrative responsibilities in cases where these are, or will be, considered essential to the efficient execution of the task of co-ordination and negotiation which the Quebec Legislature has given it. There is no question of rigidly centralizing services with a view to exercising a narrow and stifling control, but, on the contrary,

to combine everyone's efforts, with a single-mindedness of direction that fully exploits all the initiatives possessed by the various departments. The direction of Quebec's policy in the question of intergovernmental relations should be centralized, but the execution of this policy should be as diffuse as possible.

As far as foreign relations are concerned, the new Department has taken charge of Quebec delegations and agencies abroad. It is also responsible, in close collaboration with the Departments of Education and Cultural Affairs, for the administration of agreements Quebec has signed with France in these areas.

It will also be the Department of Intergovernmental Affairs that will have the job, if necessary, of bringing to satisfactory conclusions the negotiations that will occur when Quebec thinks it opportune to establish more extensive relations abroad in those areas within its jurisdiction.

The Department will also have to pursue negotiations already entered into with the Ottawa External Aid Office, in order to establish a means of federal-provincial collaboration for sending Quebec teachers and specialists to underdeveloped countries. Furthermore, the Department will be interested in the participation that Quebec might take in the undertakings of certain international organizations. It is indeed this Department that will study, or will have the various Quebec departments interested study, the many projected international treaties that Canada cannot execute without the consent of the provinces.

In order to illustrate in a more concrete way the matters with which the Department is currently preoccupied, it would perhaps be useful, in closing, to mention certain subjects which will be receiving its attention during the course of the next few months. Among other subjects there come to mind the Confederation of Tomorrow Conference that the Prime Minister of Ontario will convoke in the autumn; the much shorter conference which will take place in Ottawa in a few days and which will discuss, from a different angle, the problem of Canada's Constitution; the study of the Carter Commission recommendations by the Committee on Fiscal Affairs; the federal projects in the areas of urban renewal or resources which are renewable, such as water; the arrangements for various economic and fiscal policies in Canada; the federal-provincial co-ordination of scientific research; health insurance; and old-age pensions; the follow-up action that must be taken in connection with the recent agreements between France and Quebec; the interests of Quebec in the field of international relations; the new constitution and the question of "special status", and so on.

There will be no shortage of work or of problems. However, they will be problems of such a nature that those who face them directly as politicians, or indirectly as civil servants, and whose immediate responsibility it is to find solutions to them, will have the feeling of doing an exciting job--a job in which, supported by both its past and present governments, all Quebec can participate.

Both in the area of federal-provincial relations and foreign relations, the task of the new Department is heavy,

complex and delicate. In establishing a Department of Intergovernmental Affairs Quebec has done something completely new. It must be said, however, that Quebec has made this innovation in a positive spirit. Quebec has commenced a task the value of which is apparent. Now with a better internal organization the government will be able to facilitate still further the development of the French-Canadian nation.

Special Status And Public Administration

Patrice Garant*

Although much has already been written about the principle of a special status for Quebec, much remains to be said about the various means of making this status a reality. This research must be carried out on the jurisdictional and institutional levels. Very interesting studies are being or have already been carried out on reorganizing jurisdictions: for example, in international relations, immigration, social security, and taxation, it is already possible to state precisely what Quebec wants. As for reforming institutions, we are not so well off. The Supreme Court of Canada and the Senate have been the object of criticism to which a few rejoinders have been given, but some study should be undertaken of other aspects.

As a nation-state Quebec has a special role as the guardian of a culture, indeed of a "civilization". The state of Quebec's mission is to see to the fulfilment and development of a genuine French-Canadian culture. The way a state exercises its powers is largely by setting up an administrative structure to achieve its aspirations. Thus we are tempted to wonder if the administrative system, both at the structural and operational levels, is not running the risk of becoming a weak

* Mr. Garant is a professor in the Faculty of Law at Laval University.

instrument of cultural development if hampered by an unfavourable constitutional frame.

A member state of a federation can, to be sure, within the limits of power granted by the constitution, endow itself with whatever administrative institutions it wishes, and submit them to any legal system it desires. This is all the more indispensable when a federated state has very special claims, as in the case of Quebec. So let us attempt to study briefly what effect the proposition of special status could have on an administrative system which would be Quebec's own.

Special status: the law as applicable to administration.

Public administration is submitted to a body of rules called administrative law or public service law. Some of these rules, are listed out of the framework of common law, while others are identical to those governing individuals. This is the modern concept of administrative law recognized just as much in France as in Britain or elsewhere.

It has generally been taken for granted that Quebec's judicial system has its roots in the two great legal traditions of the western world: in English law, which has shaped our parliamentary institutions and our public law, and in French law, which originated and is still the prime inspiration of our Civil Law. This fundamental, two-sided nature of our positive law seems to have been clearly stated when our private law was codified in 1866. This codification occurred almost simultaneously with the birth of our province.

In countries with a codified law, codification means

the presence of a "code" which forms the cornerstone of the whole legal system. This code is regarded as a "general law"; it defines the basic legal categories and mainly ensures the pre-eminence of the text over the court's interpretation. This leads to the following questions: does this imply that ab initio the Quebec Code has become so deeply rooted in Quebec as to become its basic law? That the Code has become the starting point or very basis of Quebec's "Common Law"?

In that case, one might have expected the Quebec courts to be more distinctive at least after 1867, because the Quebec legal system is structured on the basis of two codifications whose definitions of categories, basic ideas, and principles of interpretation are written down, whereas all those under the common law are not.

Quebec courts, anxious to set up a system of law which would reflect Quebec's personality, had to wage a goodly number of battles against the imperialism of the Supreme Court of Canada, a tribunal whose greatest concern has been to apply standardization in the field of law.

The first battle is as much over civil as administrative law; it had to do with confrontations resulting from the rule of stare decisis according to which courts are bound by precedents bearing on the same subjects. Now such a rule, inherent in the common law system, does not apply in written law systems as found in France and Quebec. Quebec courts have always declared their reluctance to be bound by the decisions of foreign courts, even the Supreme Court, which, in this regard, has always acted

like a court of common law. Much indecision has resulted and many attempts by our magistrates to give an original interpretation of the rules of our law have proved to be deceptive.

A second battle, this time over administrative matters in dispute, affects the important institution of delegated power. Here the case of *Vic Restaurant v. Montreal* marks a crucial turning-point. In a series of decisions handed down from 1914 to 1959, our courts were in favour of a restrictive application of delegated power or of the acceptance of what could be called implied delegation, that is, delegation stemming from the scope and the object of the law. Thus, the regulation authorizing the chief of police or a civil servant to issue a permit could leave this civil servant some leeway under the authority exercised by the city council or the minister, the only condition being that the civil servant must be in a position to justify his decision. Now the Supreme Court, taking the opposite view from that upheld by Quebec judges on the three levels, stated in 1959 that this was an "illegal delegation of power" because the police chief was not given sufficient direction.

Another interesting difference was brought up in regard to the institution which, in Administrative Law, is called the "Public Utilities Concession". This complex institution has two aspects; i. e., it is half-contractual and half-regulatory. In other words, it contains a distinction between the monopoly (or franchise) granted, and the actual agreement which states both the financial arrangements and the mutual obligations of the contracting parties. If no privilege has been formally granted, does

this mean that the city council, after granting an enterprise permission to build a system of aqueducts and allowing them a 25-year tax exemption, can immediately build its own aqueduct without consideration for previous obligations, or issue other identical permits for the same purpose? Judge Bissonnette, speaking for the Appeal Court, thought not and contended that to solve the problem we must "resort to the customs and practices of our economy and our social life, and also to the parties' common intention" (Mun. St-Anne du Lac v. Hoque - 1958 Quebec Appeal Court 183 (186)). In addition, our courts considered it fair in these cases for the Administration to compensate the private manager of a public service for his losses. The Supreme Court (1959 Supreme Court 38) reversed this trend that seemed to have prevailed in our province since 1911.

With regard to the very important heading of administrative responsibility, sizeable disparities appear between certain areas of Quebec jurisprudence and that of the Supreme Court.

Without taking into consideration the human aspect or the fairness of the cases concerned, it is plain that the Supreme Court has purposely ignored or sidestepped the procedural immunities which Quebec law granted public administration and its agents.

In the case of Chaput v. Romain in 1955 (arrest of Jehovah's Witnesses), the Supreme Court considered good faith as the sine qua non condition for granting these privileges; hereby, it was in contradiction with both the Appeal Court and the

Superior Court (1955 Supreme Court 834; 1954 Quebec Appeal Court, 794). In 1959 in the case of *Lamb v. Benoit*, three dissenting Quebec Supreme Court justices approved the unanimous decisions of the Superior Court (1959 (17) D.L.R. 369). This confrontation was brought about because the Anglo-Saxon Supreme Court justices were basing their decisions on English precedents and were granting them the weight that in common law is granted to precedent.

Again, in reference to the personal responsibility of public agents, let us mention the tour de force carried off by the Anglo-Saxon Supreme Court justices in the famous case of *Roncarelli v. Duplessis*, a tour de force which amounted to a revolution against article 1053 of our Civil Code. More recently, two tendencies still seem to appear in the jurisprudence concerning the responsibility of policemen for offences committed in the pursuit of criminals. (*Gordon v. Beim and Goyer*, 1965 Supreme Court Report 638 (6-3 majority) - 1964 Quebec Appeal Court 638 (4-1 majority)).

Another very interesting disparity concerns public administration's responsibility for damages resulting from the erroneous interpretation of a regulation (*Ville St-Laurent v. Marien* 1962 Supreme Court-580; 1961 Quebec Appeal Court 310). Should public administration's good or bad intentions be taken into consideration? If the principles of responsibility of Quebec law apply (1053 c.c.), the public administration may have to compensate for any damages caused through error in interpretation, such an error being legally considered an offence. In Quebec, there seems to be only one system of responsibility

in common law applicable to any individual or collectivity, private or public; exceptions can occur only when specifically stated in legislation, which is often the case. Our courts have made innumerable decisions in which the question of the public administration's good or bad faith bore no weight in its being held responsible for damages caused while exercising its powers.

If we consider the very important matter of the interpretation of rules pertaining to public properties in Quebec, frequent attempts to introduce common law rules have been prejudicial to the formation of a distinctively Quebec jurisprudence. Of course, the Civil Code refers to administrative laws to supplement the rules already contained in it, but is not the essence of this part of the law pertaining to the public domain of the provincial state also typical of Quebec? This seems to have been the opinion of the Judicial Committee of the Privy Council in 1914 in the Fisheries Cases as expressed by the famous Viscount Haldane: "The Common Law applicable in Quebec is, generally speaking, the old French Law, as it was introduced into the territory of the Province when it was subject to the rules of the king of France." To that must be added the numerous laws typical of Quebec which have been grafted onto this "Common Law applicable in Quebec".

Two other very enlightening disparities are provided through the jurisprudence pertaining to restrictive clauses and that referring to the so-called rules of natural justice.

Restrictive clauses are provisions through which the courts are forbidden by law to revise or pass judgment on the

validity of the public administration's acts, be they acts of the Minister, of Public Corporations or of other administrative authorities; the rules of natural justice are designed to force public administration to justify its decisions or to give to the other party involved an opportunity to state his objections.

Quebec legislation, for reasons we shall not discuss here, has frequently turned to these clauses, and whenever it wished to force a public administration to justify its decisions has done so by resorting to clear and explicit texts. Quebec courts have tended to comply with this intention, contrary to the Supreme Court which preferred to follow common law jurisprudence. Of course our judges have finally fallen in line with this jurisprudence, but a jurist trained under a system of written law might have been shocked by their speculations on the intentions of the Legislator.

It is indeed easy to assert that English law on the judicial control of public administration is applicable in Quebec, but, in practice, these rules are stated in our own Code of Civil procedure. We are, therefore, not surprised to see that there is in existence a certain jurisprudence and a certain doctrine unwilling to interpret these rules on the bases of precedents unfamiliar to Quebec, even if this tendency is not a predominant one.

Can the courts go on following two different rules of interpretation?

Most of these disparities portray a difference in legal mentality between legal experts from Quebec and from elsewhere. It is often stated that one of the reasons behind this

situation is the traditional insufficiency of Public Law training prevailing in Quebec. This fact must surely be admitted and deplored, but in our opinion the real reason lies much deeper. Quebec positive law, in its present day complexity, compels Quebec legal experts to be experienced in comparative law or risk working under a severe handicap. There can be no question that comparative law is a difficult science. Moreover, it seems to us that the benefits derived from comparative law can be better obtained at the legislative level than by judicial interpretation, since judicial interpretation involves uncertainty. In an impressive number of border-line cases, in administrative law, commercial law, and even in pure civil law, we have noticed that our legal experts and judges must wonder if the rules and precedents of common law apply or not.

Quebec legal experts belong first of all through their training and their way of thinking to a tradition of written law. Now in this tradition, the text of the law is the final criterion. It may be interpreted but it must be respected; one may not choose to ignore it by speculating on the intentions of the writer or by establishing precedents to state what he should have stated. On the other hand, in terms of common law, the "statute" is the exception to the system built up through a venerable tradition. Strict interpretation of the text is quickly set aside and replaced by analyzing and confronting precedents.

From the few cases we have mentioned, we get the impression that Quebec-trained judges have experienced some difficulty or unquestionable uneasiness in trying to adopt rules and princi-

ples of common law in administrative law and in adopting the approach and dialectics of Anglo-Saxon jurists. Whenever our courts have worked out really interesting and constructive jurisprudence, they have done so by interpreting our legal texts and by relying on tendencies developed in Quebec; as an example, we could mention the decision concerning conflicts of interests in municipal affairs, etc.....

If Quebec wishes to create its own administrative institutions, it seems almost logical that the rules that govern these institutions be interpreted by Quebecers; Quebec administrative law should not be a mixture of techniques and solutions forced on it from the outside and poorly digested. This is the problem of the administrative legal field: the control and interpretation of administrative law by the courts.

Special status and administrative legal problems

No modern legislation is indifferent to the idea of knowing who will judge public administration. Legislators in our western countries have widely accepted a large measure of legal control over administrations, exercised either by regular courts, or by special courts called administrative courts that are partly or completely independent.

However, the Quebec government would be reluctant to see its public administrative bodies controlled by justices appointed by the Federal government and in the last instance by a court for which and with good reason it would have little sympathy.

One of the main features of Canadian federalism is the

lack of separation between the federal and the provincial judicial orders. The United States comes close to fulfilling this necessity of federalism, but other federations have chosen half-way solutions. What is more important, however, is the presence of a supreme court of appeal of universal competence that would have the last word for interpreting not only federal law but also the law of the member states. This court would be the ideal laboratory for giving uniformity to the law and would become by this very fact the "bête noire" of those who wish to retain their distinguishing features.

Not only is the trend of our Supreme Court towards standardization, but its members are appointed exclusively by the Federal government. And to strengthen the federal power's guardianship over the provincial legal systems, the Federal government itself appoints the provincial Supreme Court justices (B.N.A. Act Section 96).

If federalism is intended to promote national unity while retaining regional diversity, the organisation for the administration of justice in Canada and the sharing of jurisdictions in that field is surely inadequate in meeting the second of these objectives. Is it then conceivable that Quebec would think of creating administrative courts or of setting up efficient processes for exercising control over the administration without the prospect of being able to appoint member judges, especially when such a set-up would ultimately be under the control of the Supreme Court, whose authority it challenges in the constitutional and civil fields?

This is why special status seems to be a workable hypothesis. By making our Appeal Court the supreme court for Quebec administrative law, and by leaving to Quebec the power to appoint its own judges, one could hope that a more coherent administrative jurisprudence would be formulated that would be in keeping with the spirit of our institutions and would incorporate the characteristic features of our own legal tradition.

The majority of administrative institutions adopted by Quebec in the last two hundred years has gradually taken on a French-Canadian outlook. The early institutions we have modernized and those we are in the process of creating to cope with the demands of socialization, government intervention and planning will tend to become more and more a distinctive reflection of the authentically Quebec way of life. Therefore, we believe that it is normal for the law governing these institutions to be a law typical of Quebec.

These claims will seem unrealistic to some people. Often the value of Quebec positive law has been praised as a system drawing upon the two great sources of western law and forming a valuable laboratory of comparative law. This extravagant praise makes little impression upon us, and we wonder whether the unity of Quebec's legal system should not be thought out anew; whether our administrative law does not strike us as being an incoherent structure, the product of uncertainty and guesswork.

If the many civil law experts find it abnormal for our private law cases to be judged by magistrates whose legal training is completely different and whose careers have taken place

entirely within the framework of another legal system, to say nothing of the language barrier, the attitude of the administrative law specialists can be no different. The danger here may be even more serious, for administrative cases bring into question the interpretation and the application of the rules of public and private law that are bound up in our legal system no matter what their origin may be.

Special status is not a cure-all, but it could be one of the solutions apt to encourage an authentic Quebec spirit; for public administration and administrative law are just as closely linked to a people's personality, as are private institutions and private law.

If Quebec has complete autonomy over the working out of its rules of law, should it not logically have the same autonomy over interpreting these rules, especially in areas where Quebec has supreme jurisdiction, be it in civil, commercial or administrative law? If the Federal government wishes to submit its administration and its public enterprises to a different law and to separate courts, let it do so; this is often the case and we can state that in Canada there are both federal administrative courts and federal administrative jurisprudence. If English-speaking provinces have their reasons for this behaviour, they are free to do so. Whenever difficulties arise because Quebec administrative law is different from the Federal administrative law or from that of the other provinces, they could be solved by referring to the techniques of private international law whenever possible. In other cases, the conflicts could be solved on the level of the legislative sovereignty of the federal

and provincial governments concerned. As for the courts, they will be able to interpret Quebec law by analogy, but with the following difference: it would be up to them to base or not to base their interpretation of the rule of law on the interpretation current at the federal level or at that of the provinces.

The problem of cultural identity is not limited merely to the fields of language and fine arts, but includes the political and economic, as well as the legal and administrative spheres.

- (1) For a study of the main problems of Quebec's administrative law, see my book, "Essai sur le Service public", Quebec, 1966 - 503 pages, from the author (\$7.00).

The Supreme Court And The Constitution

Jacques Brossard*

Of all federal constitutions Canada's is the sparsest and perhaps the most confused there is. First, it includes certain fundamental texts, notably the British North America Act of 1867, as well as other Canadian or Imperial statutes and orders-in-council. Moreover, certain British customs and numerous constitutional conventions form an integral part of Canadian constitutional law. The Canadian Constitution, however, does not only consist of these documents and customs; jurisprudence in constitutional affairs, that is to say, the sum of judicial decisions which, since 1867, have affected the legal interpretation of these texts and customs, form just as much a part of our constitutional law. This jurisprudence even constitutes the principal source of its evolution and, consequently, of the evolution of Canadian federalism. It has even been justly said that the power of the judiciary has at times exercised quasi-legislative functions.

It was this judicial power which, for example, gave the Federal government its jurisdiction over radio broadcasting or the power to impinge, in several instances, on some areas of provincial jurisdiction. Moreover, it was the judiciary

* Mr. Brossard is a professor in the Institute of Public Law at the University of Montreal.

which gave the provinces their jurisdiction over labour relations, and social insurance and security.

The Supreme Court and Canadian Federalism

Until 1949, as we know, the Judicial Committee of the Privy Council was the supreme arbiter of Canadian constitutional law and the Supreme Court of Canada was obliged to submit to its authority. The jurisprudence of the Judicial Committee was, on the whole, favourable to federalism and to a balance between the two levels of government, that is to say, between the powers of the Federal government and those of the provinces. Therefore, it very often protected the rights of the latter. It was, moreover, in opposing the centralizing aims of the federal government that the Judicial Committee signed its own death warrant; it was accused, not without reason, of having violated the centralizing spirit of the B.N.A. Act of 1867.

Insofar as it was free to judge according to its own inclinations, the jurisprudence of the Supreme Court, on the contrary, proved itself to be distinctly favourable towards the Federal government.

The Supreme Court's first decisions favoured centralization and it continued to do so to the fullest extent, wherever it was not obliged by the precedents of the Judicial Committee, to respect the balance demanded by federalism. While violating the spirit of federalism, however, it proved itself to be more faithful than the Judicial Committee to the centralizing tendency of the B.N.A. Act.

Due to the abolition in 1949 of all appeals to the Judicial Committee, the Supreme Court became supreme in matters of Canadian constitutional law, although it had been conceived in 1867 as an intermediate court of appeal, subordinated to an independent arbiter. Since 1949, it appears to have moved further and further away from the provincial "bias" of the Judicial Committee. Several of the most recent decisions of the Court have been particularly favourable to the central government and dangerous for the provincial governments. It was thus, to quote one single example, that it recently resurrected in favour of the Federal government, the so-called theory of national dimensions which opens wide the door to federal trespassing on provincial matters.

The judgments of the Supreme Court have the force of law so long as the Constitution or the laws are not changed to make this otherwise. The danger, however, is increased by the fact that the higher provincial courts - for example, in Quebec, the Court of Appeal and the Superior Court - feel themselves bound, as does the federal Exchequer Court, by the decisions of the Supreme Court. We will show, moreover, a little later, that they are composed, as is the Supreme Court, of judges appointed by the Federal government alone.

The Ills of the Canadian System

Since before 1867 (and more particularly since 1875 when the Supreme Court of Canada was established) many French-Canadian politicians foresaw that this Court, specifically

created in a spirit of centralization, would not serve the interests of Quebec. Since then, an even greater number of politicians, jurists and commentators have demanded the reorganization of the Canadian judicial system insofar as it concerns constitutional law. However, the only important modifications since 1875 have been contrary to provincial interests.

In effect, few federations completely respect the principles of federalism in this area, but none violates them to the same extent as Canada. On the one hand, our judicial system is distinctly unitarian and the jurisdiction of the Supreme Court incontestably overrules the provincial superior courts even on questions of a provincial nature. On the other hand, the "safeguarding" of federalism and the evolution of the Constitution relies on courts whose judges are all appointed by the central government and, in the last resort, by a supreme court, the organization and jurisdiction of which are determined solely by the Federal parliament. The Constitution does not protect federalism in any way. Let us add that the judges entrusted with interpreting the constitutional law are nearly all private law specialists. Moreover, bilingualism is not completely respected at the federal level.

On the contrary, according to the principles of federalism, the organization of the constitution, the jurisdiction of the courts, and the method of appointing the judges should be expressly laid down by the Constitution of the federation. Above all, the supreme body which controls

the constitutionality of laws, should be, like all other arbiters, impartial; it should therefore not depend on the federal state more than on the provinces; it should, moreover, be free, as much as possible, from political pressure. It is a question, and let us not forget it, of the Supreme Court of the federation - that is the whole, constituted by the federal state and the member states - and not of the federal state alone. It is, moreover, desirable, in view of the complexity of constitutional questions in a federal system, that the judges be as competent as possible in matters of constitutional and public law.

On all these points, the other federations may, in one way or another, serve as examples. In view of the limits of the present article,* we will restrict ourselves to the question of the selection and the appointment of judges. In all federations the member states or the judiciary have a say in that matter. Thus, many federations themselves appoint the members of their courts which are granted jurisdiction in constitutional affairs. This jurisdiction, moreover, is often exclusive when it is a question of interpreting the internal constitution of the federation. What is more, in the majority of federations, the member states have a part in choosing the judges of the supreme

* It goes without saying that the limited length of this article only permits us to touch on the present question, which, moreover, was the object of a 400-page study recently submitted to the (Quebec) Legislative Committee on the Constitution, and which will eventually be published by the University of Montreal Press.

court, either by being consulted or even through the intermediary of one of the federal houses. It is thus that, in the Federal Republic of Germany, the member states directly appoint the senators who choose half the judges of the federation's constitutional court. It even happens that some judges of the state courts, appointed by their respective states, form part of the Federal Supreme Court.

Some Necessary Reforms

It is obvious that, from the point of view of the provinces, certain reforms are necessary. Quebec, moreover, has special reason to demand them; it is the only part of a federated state in the world in which is concentrated practically all the members of one of the two ethnic and cultural groups (or one of the two nations) which are united by federation; in addition, its judicial system and understanding of law are different from those of the other provinces. Although new or sui generis solutions may well be necessary, the theory of federalism and comparative law can supply us with many examples. These have, on the whole, prompted the following suggestions (once again we must not forget the special nature of Quebec: thus it is that the example of the U.S. - so dear to several Canadian judges and notably to those in the Supreme Court - cannot be applied, without modification, to the case of a binational federation).

From a hundred suggestions, we will only be able, however, to keep a few and, unfortunately, we cannot discuss

them here. Furthermore, there would be no question of any miraculous solution. Certain of these suggestions would necessitate some constitutional changes or would only be practicable in a hypothetical situation in which political evolution had obtained for Quebec a special constitutional status within the framework of Confederation. Others, on the contrary, are conceivable under the Constitution as it functions at present - but the majority would depend, in practice, on the generosity of the central government. Let us stress first of all that the Constitution - either new or modified - would have to guarantee the existence of courts competent to deal with constitutional matters, at the same time paying special attention to their jurisdiction and their composition. In this way the Supreme Court would no longer be dependent upon the Federal government as it is at present.

A Court for Constitutional Matters

If the present Constitution were modified, we could establish a special court for constitutional matters at the federal level as well as at the provincial level in Quebec. Failing that, the Supreme Court of Canada should at least have a chamber specializing in constitutional affairs and comprising in part, judges of the Supreme Court - including all the judges versed in public law, if there are any - and, in part, special judges, experts in constitutional law. We could also allocate to the courts some advisors, including perhaps a political scientist who could serve a useful purpose (in truth, there is no reason not to appoint such advisors right away). The Appeal

Court - or Supreme Court? - of Quebec could be reorganized in the same way. Following a procedure established for this purpose, all constitutional matters would have to be referred to the specialized chambers. In this way, these questions, which are fundamental in a federal system, could be dealt with more efficiently.

Appointment of Judges

Judges should be chosen by political authorities from among graduates in law and only with the approval of the Bar Association and particularly the magistrates. They should be chosen from lists drawn up by the political authorities. In this way, the political character of the recruitment of judges could be reduced somewhat; naturally, the latter would not, because of this, lose all their personal convictions concerning either the constitutional or political evolution of Canada.

Judges of the Quebec courts should all be chosen and appointed by the provincial government; however, in view of the jurisdiction of the Quebec Supreme Court in matters of mixed interest, perhaps the Federal government could be consulted, at least for the appointment of a certain number of judges for this Court. (This reform would necessitate the modification of the existing Constitution.) Judges of the federal Supreme Court for constitutional matters should be chosen in part - if not appointed - by the provincial governments. It should be obligatory that an expressly determined number of these judges

be from Quebec: this number could, moreover, vary according to the political option chosen. Thus, in the hypothetical case of a special status, Quebec could choose (and, perhaps, itself appoint) three of the eleven judges of the Supreme Court for constitutional matters, the other common law provinces could choose (unanimously) three other judges, and the federal government five judges of which at least one or two would be from Quebec. Judges of the federal court of first instance could be appointed by the Federal government alone, but it would be obligatory that a certain number of them come from Quebec.

The Division of Areas of Jurisdiction

With regard to jurisdiction, the constitutional chamber of the Quebec Supreme Court could exercise jurisdiction of the first instance in matters of mixed interest (that is of both federal and provincial interest), and a final jurisdiction without appeal, in constitutional affairs of a strictly provincial nature. On the other hand, the constitutional chamber of the federal Supreme Court would exercise final jurisdiction in matters of mixed interest, and in strictly federal matters (on appeal by a federal court of first instance), as well as an exclusive jurisdiction in conflicts between provinces or between the Federal and provincial governments.

Other institutions would have to be changed: for example, the Quebec Supreme Court should not have to feel bound by the decision of the federal Supreme Court in areas

which concern only Quebec. The courts, rather than clinging strictly to the common law, as they do now, should be able to call upon not only comparative law, but also political science; the advisors, whose appointment we suggested earlier, could enter the picture at this point. Bilingualism should be respected at the federal level, while the provinces would be free to have the system of their choice, always respecting, however, the rights of minorities, etc.

Whatever the case may be, what is really essential is to reform, as early as possible, the Canadian Constitution, to promote a greater respect for federalism. However, in this domain as in many others, it goes without saying that legal solutions, if they are finally adopted, will result, above all, from general political evolution and will depend largely on the strength or lucidity of the parties involved.

Associate States

The preceding suggestions were made within the perspective of a renewed federalism, within which Quebec would enjoy increased powers and a highly decentralized status.

Supposing that Quebec were to assent to sovereignty, the solution would obviously be different. Nonetheless, it would still be advisable to establish a confederal constitutional court for cases of conflict between Quebec and its Canadian partner or neighbour. In the case of conflict, it would certainly be more practical to refer to this court, rather than to the International Court in The Hague. In addition, this court could

protect the collective rights of the minorities in both states.

The Court of Justice of the European Community or the Court of Human Rights of the Council of Europe could serve more or less as models. Half the members of the confederal or inter-state court could be appointed by Quebec, and the other half by Canada. The two states would have to agree on the appointment of the president of the court, the vice-president being named from the other state (the president would have the final say in cases of a split vote, but the presidency would alternate).

This court would be "international" but its jurisdiction, up to a certain point, could be supranational. To a certain extent, its decisions could link the courts in the same way as it would the governments of the two states.

Criminal Law and the Constitution

Dollard Dansereau, Q.C.*

Since the time when French Canadians through the conquest became "British royal subjects", and since the Quebec Act of 1774 introduced to our country's constitution English criminal law, Canadians of French ancestry have become accustomed to this body of law and are by now convinced of its superiority over all others. The English penal code has penetrated their spirit and their way of life. Only a few specialists, of which I am one, doubt this superiority and tend to prefer, on the whole, the French criminal code. Now in my opinion one question presents itself before all others when we speak of modifying the B.N.A. Act of 1867 to confer on the provincial governments the power to be the sole legislators in the field of criminal law. The question is this: do the citizens of Quebec want to abolish English criminal law in their province?

A referendum would produce a negative response to that question. We are satisfied with the adaptation of French civil law used in Quebec, though our provincial government has not done wonders in this field. On the other hand, even French-speaking Canadians declare themselves satisfied with English criminal law. They are in no respect ready to substitute for it either the French or the American equivalent. Then what good is it to

* Mr. Dansereau is a lawyer who practises in Montreal.

alter the status quo which, as it exists, is easily incorporated into a federation or confederation (whichever you prefer) of the Canadian provinces?

The constitutional status quo

Section 91 of the 1867 Constitution confers upon the federal government the exclusive power to legislate in the field of criminal law and procedure; section 92 entrusts to the provincial governments in their respective territories the administration of criminal law and the organization of criminal courts. The Fathers of Confederation, with their eyes turned to the United States and the Civil War, were anxious to save their children from any similar conflict. By giving the central government all authority to legislate in matters criminal, they wanted to avoid the disorder born in that neighbouring country from the quasi-sovereignty in these matters of the constituent states. We are still witnessing these disorders.

Every penal code has as its basis the following principle: everything is permissible unless expressly forbidden. In other words, crimes and infractions consist only of those acts deemed such by a law, a public statute or an official order. The Canadian penal code contains the definitions of crimes recognized by English criminal law, including the common law when it is referred to. In fact, our code is based on the English codification of 1878 which was rejected by the British Houses of Parliament. They decided to retain only the common law. Yet, in the Canadian penal code, the common law plays only a supplemental role.

The customs and traditions of a people shape its penal law. In turn, the penal law moulds the political and civil aspects of the society. For example, certain Asian countries permit bigamy and polygamy; both of these are prohibited in Canada. Sorcery was prosecuted in Spain and in certain American states after the rest of Europe and America had outlawed this medieval crime. The penal law of Western countries is steeped in Christianity. Despite this fact, we should not confuse crime with everything that Christian morality forbids. Adultery, as another example, is morally wrong in the eyes of Christianity; it is not punishable under Canadian criminal law.

Not all punishable crimes, and, above all, breaches of law, are regarded as offenses against Christian morality. The latter does not condemn all forms of involuntary homicide or criminal negligence. Moral law does not change, whereas penal law does. Now, it is English penal law and Protestant traditions that Canadian society has adopted in its legislation to run the society in an orderly fashion - and our people are satisfied with this state of affairs.

Canadians of French and Catholic origin do not always share the ideas of their fellow citizens of other origins regarding certain categories of misdemeanors. According to the B.N.A. Act, the penal code involves many, often disputed prohibitions; they stem, in general, from the Protestant tradition which dominates Ottawa. They seldom concern the very basis of the criminal code. Consider, in this regard, the federal and provincial laws concerning the observance of Sunday, or the

various temperance laws. Methods have been sought to reconcile the opinions and customs of the various Canadian ethnic groups in these areas. However, here was a subject for penal legislation. Today, if Ontario wants to prohibit all Sunday activities, so much the worse for Toronto. If the citizens of British Columbia or Manitoba are happy to hide their whiskey bottles under their restaurant tables, so much the worse for them.

Lotteries and gambling, forbidden by the present criminal code, have been the objects of debate between the Ottawa and the Quebec governments. Anglo-Saxon puritanism shuts its eyes to horse-racing; nevertheless, it is wildly against lotteries which are, in fact, used in Catholic Ireland and France. I believe it is possible to find a compromise which would win support from all voters. It would take the form, mutatis mutandis, of diverse legislation concerning Sundays. Such divergencies do not appear to me sufficient to justify changing the B.N.A. Act as regards criminal law, especially since the problem can be solved without much difficulty. The federal government ought to be less sparing of compromises of this nature.

Uniformity

It is necessary to temper the desirable uniformity in law in a country with so many diverse demands from its citizenry, especially when its population is spread, as ours is, over so large a stretch of land and when, in addition, it includes so many different ethnic groups. It is these conditions which justify certain regional and even municipal demands. Still, I

believe that, viewed as a whole, penal law ought to be the same throughout the country. England, France and Germany understand this, despite their regional divergencies, and in their respective lands they have achieved a uniformity of criminal law and procedure. The United States would perhaps like to imitate their example. Criminology has shown itself to be a universal science at least in western countries. The uniformity we are talking about probably facilitates police searches: proven criminals should not be able to take refuge in the subtleties of legal procedure. Now, who could ensure this uniformity better than the federal government?

Moreover, Canadian penal law, in its present state, forms a whole from which it is difficult to separate the parts. The definitions of the most serious crimes show themselves to be appreciably the same in all western countries. Murder or rape are prosecuted almost everywhere on the same bases; although the texts and certain clauses may differ, it is principally the laws of procedure and evidence that distinguish the Canadian law (derived from English criminal law) from others. Sometime ago, Mr. Perrault-Casgrain, Q.C., President of the Canadian Bar Association, recommended the substitution of a preliminary investigation before a judge, such as in France, for the preliminary investigation which is the custom in Canada. This type of measure would perhaps suit Quebec better than the procedure now in practice. From another angle, its introduction into Canadian penal law would upset other rules which we follow, for example, the absolute freedom of the accused to refuse to

testify without anyone being able to comment on this refusal. As long as the people of Quebec wish to remain faithful to the English penal law, they cannot without risk draw from French penal law such institutions as appear to them superior. Among the principles that govern criminal procedure and the related laws of evidence, there are very few choices; they form an almost unalterable whole.

Finally, it can hardly be said that the Government of Quebec has shown excessive dispatch or ability in drawing up good fundamental laws. For a quarter of a century, it has been promising us a revision of the insurance laws of the province; it took the Government half a century to prune the code of civil procedure. The adaptation of the civil code to modern customs has not always been done quickly, nor was it always pleasant, as witness the civil status of the married woman.

The courts

The provincial governments take care of the organization of civil and criminal courts in their respective territories. The Government of Quebec itself chooses the presiding judges.

Since 1867, the federal government has organized various courts to consider matters which fall under its jurisdiction. I have in mind the Supreme Court which is the only federal court with competence in criminal matters. I do not believe that the Supreme Court ought to continue to exercise its power of appeal in this domain except when the cases involve constitutional matters - and then, only with special authorization. The Supreme Court is, and should remain before all else, the guardian of

our Constitution. It can extend its power to deal with appeals in matters where the federal courts of first instance have pronounced judgment. The federal government may bring a disputed matter before the Supreme Court in order to obtain a legal opinion which will be final, according to the accepted rules of common law: that includes criminal law, but only in rare instances. The Supreme Court judges deal less and less frequently with appeals under criminal law, per se, and the only justification for Supreme Court intervention, as it now occurs, is the doctrine of "stare decisis" which is applicable to all the provinces and whose purpose is to maintain a certain stability in the application of penal law. This intervention would not be necessary if the federal government, at the suggestion of any one of the provincial Ministers of Justice, made more frequent use of its right to request the opinion of the Supreme Court on a question of criminal law.

Will Quebec be able to content itself much longer with the courts it has set up since the present Constitution came into effect? I doubt it. To begin with, the needs of the population have increased and become more diverse. We need, first of all, courts which act with dispatch. In addition, the judges appointed by the Quebec government too often are recruited with less care than those designated by the federal government; this situation must be improved. Our provincial judges are poorly remunerated in comparison with their federal counterparts. Their salaries are lower than those of a departmental head in government or in a large city. The slowness of justice, as much

in the civil as in the criminal courts, is ascribable to the Quebec government alone and to its incompetence, and this is the cause of irreparable damage. Before appropriating new powers for itself, I believe the Government of Quebec should put its house in order and respect its own judges. I know of instances during these last years where the Attorney-General of Quebec assumed for himself, from the judges, rights which do not belong to him and conducted himself before them in a very insulting manner.

Reform of the civil and criminal courts is imperative in our province. And we need more judges. Let us begin there, before demanding the power of appointment of all judges with competence in our province, with the exception of those who preside over federal courts per se; this reform is the only possible goal in a confederation or a federation of provinces.

Until now, I have not broached the choice of separatism. I sometimes envisage it in a legislative union of Quebec and Ontario. If French Quebec becomes a sovereign state, it will probably choose English criminal law as its basis, in view of the general opinion of the citizens of our province. But whatever is decided upon, federation or confederation, the criminal law ought to be entrusted to the higher form of government which would, in turn, be free to grant considerable autonomy as regards minor crimes and misdemeanors to the regional governments.

The Internal Constitution Of Quebec

René Hurtubise*

Although it contained no provision for its own amendment, the B.N.A. Act of 1867 gave the legislature of each province the power to amend its own constitution except where changes involved the position of the Lieutenant-Governor. One hundred years later a discussion continues nearly every day about the rewriting or renegotiating of the Canadian Constitution or at least the updating of it to meet new requirements. Would it not be equally as valuable to analyse the Quebec constitution so that its exact content is understood and so that improvements might be suggested?

The paragraphs which follow are an attempt to give a brief outline of Quebec's internal structures and its basic laws. The outline will have served its purpose if it encourages further reflection.

Would a presidential system be contrary to the constitution?

In keeping with classical theories, one can speak of executive, legislative and judicial powers. When executive power is mentioned we think of the Lieutenant-Governor and the

* Mr. Hurtubise is a professor of law at the University of Montreal.

Administration - in other words, the Executive Council, the civil service and the Crown corporations, commissions and trusts. Is it legally possible to replace the system that we have, based as it is on ministerial responsibility, by a presidential regime? Would this be contrary to the preamble and several articles of the B.N.A. Act of 1867, particularly Article 65 which refers to a constitution similar in style to that of the United Kingdom and to responsible government? It is quite probable that it would not, although the question has not been fully studied. One still awaits proof of the superiority of this system and the need to implant it here. The presidential system envisaged might well resemble that of the French rather than the American system for one of the former's assets is the possibility it opens of naming ministers who are not elected. What is the feeling in Quebec towards the notion of ministerial solidarity and secret deliberations? Would it not be in point to attempt to specify (or merely to question) the content of these notions which have been inherited from British constitutional conventions?

What, in this province, is the exact status of the Minister of Finance? A priori, this minister does not seem as powerful as his counterparts in Britain or Ottawa. How do the inter-ministerial committees function now that they have become indispensable where matters concern more than one minister?

Two desirable reforms

The function of the civil service has recently been reconsidered and their right for collective bargaining recognized.

Would it not be useful, however, to specify the distribution of responsibilities between the Treasury and the Civil Service Commission for the purpose of determining which areas are open to collective bargaining and which areas are not negotiable because they stem from the powers of the Commission? Is it not time to set up a team of competent negotiators in large enough numbers so as to represent the government vis-à-vis the civil servants and the other public employees?

It is time to put in order the various commissions, trusts and corporations which come under the Crown. The experimental stage is over; the necessity of having these bodies is recognized. Why then not vote two basic laws - one entitled "Commissions and Trusts Act," the other "Crown Corporations Act"? Each of these laws would permit the establishment of commissions or corporations, the appointment of members whether experts or employees, immunity for employees when necessary, the legal status of these entities, and the general powers they would possess, e.g., the power to make contracts, the power to borrow, to prosecute and be prosecuted, financial powers, the power to make regulations, etc. As a result, all commissions and corporations would be created under these two laws (always with the possibility of exceptions). All commissions and corporations would stem from a common mould and their character (whether it be a law or an Act of Council) would specify the areas, if any, where they differed from the Act under which they came. Each individual charter would thus be free to specify the institution's objectives, and to endow it, if necessary, with

extraordinary powers.

This reform which the Legislature could enact immediately, is urgently needed and ought to be part of the whole rethinking of Quebec administrative law.

Nothing prevents the abolition of the Legislative Council

If one now considers legislative powers, it must be remembered that these are exercised by the Lieutenant-Governor and the two Houses. The position of Lieutenant-Governor cannot, according to Article 92 (1), of the B.N.A. Act, be abolished. The question is to what extent can his functions be whittled away and removed one by one? The abolition of this post could only be negotiated with Ottawa at the same time as the rescinding of the powers of disallowance and reservation. But in fact, is it really a priority?

The Legislative Assembly presents the real challenge. There is a real need for a reassessment of the members' role and there is nothing to stop the Lower House from taking up this task immediately. Several months ago, Mr. Gérin-Lajoie drew up precise suggestions emphasizing among other things the advantage there would be in grouping the members into specialized committees and putting a secretariat at their disposal, etc. It might also be useful to study the nature and the extent of the privileges of the members of the Legislature, with licence to break with the past where certain privileges are found to be obsolete.

According to constitutional conventions and law, the Legislative Council is inferior in stature to the Legislative

Assembly. Would there be any point, as was attempted in 1965, to make this inferiority more formal and explicit as it has been since 1911 in the United Kingdom? Would it not be simpler to abolish this Council which has no historical roots here as it does in England and which has always served as material for criticism from the opposition. Nothing stands in the way of its abolition in spite of the fact that the means to bring it about have, as shown by the 1965-66 experience, proven to be difficult.

The labyrinth of delegated legislation

A few additional remarks should be made here to emphasize a major gap which, if it wanted, the Legislature could fill tomorrow. It involved the question of delegated legislation - to use Driedger's definition: that part of the law, such as an-order-in-council, a decree or a regulation, which is neither voted nor decreed by a sovereign legislative body. Today it is impossible to find one's way out of this labyrinth. No real publicity is given to this delegated legislation which is acted upon by various levels of administration: the Lieutenant-Governor in Council, ministers, commissions, boards, offices, and Crown corporations. In this regard, the Americans have an excellent suggestion in the form of their "Federal register". What stands in the way of our setting up a similar register which would indicate the law authorizing the subordinate legislation, the date it is to come into effect and assure its being made public? It is only up to the Quebec Legislature ...

Judicial Powers

Judicial powers raise certain questions. In the first place one might turn to the setting up of a system of legal aid aimed at maintaining true equality for all before the law. There is no constitutional obstacle barring this end. Moreover, since this idea is in practice abroad, one could study the way in which judges are nominated to ensure that it is the one which, in fact, best guarantees impartiality in the administration of public justice. Also, what is it we are waiting for, keeping in mind, of course, the complications arising under Article 96 of the B.N.A. Act, before establishing a well-structured administrative court system as has been done on the European continent? The United States has an administrative procedural code; ever since the Frank Report, Britain has had an administrative court of appeal. Quebec however, has done nothing decisive. If, after study, Article 96 was shown to contain insurmountable obstacles - something which is yet to be proven - there is always the possibility of discussing the amendment of this article in the Canadian Constitution with Ottawa.

May I be permitted to conclude by expressing the wish that Quebec will make its constitution more complete by adding a provincial charter of human rights to it. This declaration would have to be guaranteed by the supervision of either an ombudsman or a provincial civil rights commission.

There can be no doubt that the discussion surrounding the Canadian Constitution represents a major problem. However, there is also a need for Quebec's own internal constitution to

be updated - a process which depends on the will of the members of the Legislature. These suggestions are put forward for the sole reason that they would permit Quebec to show its true colours and to prove that it fulfils present day requirements. Realizing that law is not a panacea, it is well to reflect nonetheless, on the words of Professor Georges Burdeau:

A constitution has a double function; on the one hand, it designates those people or bodies whose duty it will be to make decisions on behalf of the State and it defines their power and the way in which it may be exercised; on the other hand, it indicates the nature of the social and political institutions under which those governing must work and so identifies the kind of law which is to become the government's policy.

The Extension of the National Capital into Quebec Territory

Paul Sauriol*

The plans for the future of the Canadian capital, which have been under discussion for several years now, raise a constitutional problem and also affect the special status of Quebec. The Canadian federation is composed of provinces: no territory in the country is placed specifically under the exclusive jurisdiction of the central government; the North-West Territories and the Yukon are only temporarily under federal jurisdiction, and the political process by which they will eventually gain provincial status is already under way.

Even if the Canadian Parliament does exercise considerable influence over the capital, the fact remains that the city of Ottawa is under Ontario's provincial jurisdiction. For a long time now, thought has been given to placing the capital exclusively and directly under the authority of the Canadian Parliament and the central government. As far back as 1893, Laurier wanted to make Ottawa a federal district analagous to that of Washington.

Due to Ottawa's location on the Ontario-Quebec border, the development of the capital within an extensive complex presupposed the inclusion of the adjacent Quebec territory in

* Mr. Sauriol is associate editor of Le Devoir.

the program. This factor probably prevented the idea from going ahead, and today it is still a major obstacle.

Even if we set aside Quebec's attitude and suppose that the federal district had been mapped out solely within Ontario's borders, with Toronto's consent, the constitutional problem would still not have been an easy one to solve. In the B.N.A. Act, important areas of jurisdiction, such as education, property and civil rights, and municipal organization, are set aside for the provinces.

If the capital were to be put under the exclusive authority of the central government, all the areas of provincial jurisdiction would have to be granted to the central government for this region. It is not easy to see what future constitutional and political repercussions would result from such an innovation.

The division of power between the two levels of government, as set out in the B.N.A. Act, is fairly straightforward; however, it has not prevented the central government from interfering on numerous occasions in matters falling under provincial jurisdiction.

A federal district, placed directly under the authority of Ottawa, would provide the federal government with a potent means of intervention in both levels of jurisdiction. At federal-provincial meetings, Ottawa would operate on both levels, and could invoke its provincial jurisdiction over a territory that would be relatively small in proportion to the size of the country, but that would nonetheless be important

due to the institutions within it. With a capital that would almost be a quasi-province, the central government would be practically, if not totally, on an equal footing with the provinces in matters of education, health, social security and property.

Within such a federal district, the central government could initiate reforms whose legality could not be disputed, but which, at the same time, would present the provinces with a "fait accompli". Not only could the federal government continue to offer the provinces money for their use, which it ought not to be collecting, but also it could initiate, within its small territory, pilot programs that would serve to pressure the provinces.

Even if no Quebec land were involved, Quebec would have valid reasons for being wary when confronted with such a profound change in the entire economy of the federal system.

On Quebec territory

Plans for the capital have undergone changes on several occasions and have, for more than a half-century, included part of Quebec's territory. As far back as 1903, landscape architect Frederick G. Todd, who was asked to draw up plans by the Ottawa Improvement Commission proposed that some Quebec territory be included; and, in 1913, the Borden government created the Holt Commission for the purpose of drawing up an overall plan for the cities of Ottawa and Hull.

In 1927, the Canadian Parliament replaced the Ottawa Improvement Commission with a Federal District Commission. This commission was authorized to exercise its authority and to expropriate land in the Hull area. In 1936, town-planner Jacques Gréber was commissioned by the MacKenzie King government to prepare a master plan of the national capital district. It was approved in 1950. This plan was extended in 1959 to include a larger area, and now encompasses an area of 1,800 square miles, 750 of which are Quebec territory.

During these years, when expropriation and work were in progress, the question of a new political and constitutional status for the capital was shelved. However, Mr. King supported the advocates of a federal district modelled after Washington, but this formula met with stiff opposition by the Quebec members from the capital area.

Should we blame the Quebec governments for having allowed Ottawa to act without intervening? Successive Quebec governments would have had to take an official stand on the question. On one occasion only, Mr. Duplessis protested against the federal commission's expropriation powers, which he said went counter to the Constitution, but he limited himself to this verbal denunciation. However, before passing harsh judgement, we would have to know what perhaps went on at the unofficial level. If Mr. King and the advocates of the federal district thesis were unable to further the project,

perhaps this was due to discreet but effective pressure from Quebec.

It is worth noting that in 1959, when the national capital region was enlarged, the Canadian Parliament changed the name of the planning body; the National Capital Commission replaced the Federal District Commission of 1927. The change of name would appear to be significant, and would seem to indicate more flexibility on the part of the central government; it implies a renunciation of the earlier plan to create a federal district with all the constitutional and political changes which this formula entailed in the minds of many federal members in King's day.

Thus the political status of Hull and of the Quebec zone included in the National Capital Region has not been changed. However, this did not stop the body created by Ottawa, the NCC, from going ahead with important expropriations and work in both the Quebec and Ontario zones - both zones having been placed under the NCC's authority in order to implement the Gréber program.

Because of the scope of this work, and because of other factors, notably the change in attitude in Quebec starting in 1960, more strenuous protests have recently been made against this federal interference and its eventual effects. Various groups are demanding that the Quebec government take a firmer stand in order to protect both the province's rights and those of the people directly involved, i.e., the residents of the

Quebec zone included in the National Capital region.

The role of the NCC

It is perfectly appropriate that the capital of Canada and its surrounding districts be improved so that the country will be proud of it. The master plan for the capital must extend to Hull and its surrounding districts just as it does to the environs of Ottawa on Ontario land. Naturally, the federal government must assume the bulk of the cost of this town-planning and beautification program, since the municipalities concerned do not have the necessary financial resources. This obviously implies that the Canadian government and Parliament will play a prominent role in decisions on the improvement of this region. But it is also important that the provincial and municipal authorities have a voice in the matter and that they be able to continue exercising their respective powers.

The "National Capital Act", passed by the Canadian Parliament in September 1958, gives the NCC considerable powers notably with regard to expropriation.

The Commission may acquire and manage lands; it may sell them or lease them; it may develop parks, public squares, roads, bridges and other work projects; and it may cooperate with the municipalities and grant them subsidies for beautification and upkeep. It may acquire lands without the owner's consent, with the compensation payments being decided by the Court of Exchequer. The Commission may pay subsidies, instead of taxes, to the municipalities, but this does not

apply to parks, public squares, roads, bridges and other similar projects.

The Quebec zone of the capital has both benefited and been inconvenienced by the NCC's use of these powers. In January 1967, the Regional Economic Council of Western Quebec presented the provincial government with a brief on the problem. In totalling up the activities of the NCC, the Council noted that the NCC: has arranged and beautified districts that no other government or body had wanted, or been able, to develop; has created magnificent parks, particularly along the Ottawa and Gatineau rivers, and constructed attractive promenades and scenic drives; has provided picnic and camping grounds and beaches for the public free of charge; has planted trees and flowers and cleaned up the riverbanks and lakes; has set up tourist attractions and observation points; has created woodland paths; has safeguarded and developed scenic natural resources which were in the process of deteriorating; has awakened the municipalities in the area to the problems of beautification and town-planning; and has publicized the region and attracted tourists to it.

The debit side of the ledger

However, this balance sheet also has its debits. The NCC's activities accentuated the industrial regression from which the area was already suffering. The NCC owns approximately 110 of the 750 square miles in the Quebec zone, in other words, 14.5 per cent of the land. Because of its land purchases and

park projects, it is restricting industrial development in the Hull region. There has been no compensation for this disadvantage through the establishment of federal buildings on the Quebec side despite the promises of federal ministers; the laws which establish most of the ministries and crown corporations specify that these bodies must be located in the city of Ottawa.

The municipalities have lost considerable tax revenue because of the development of parks and because of "the greenbelt"; there are virtually no buildings on the NCC lands, hence no subsidies to compensate for real estate taxes.

This federal body is powerful and its staff is an impressive one with the result that the small municipalities cannot deal with it on an equal footing. It is blamed for having turned Hull into an urban dormitory and for having made the Gatineau park into an amusement spot for the people of Ottawa without regard for the economic survival of the Quebec zone of the national capital. In comparison with Ottawa's 6,000 acres available for industrial development, Hull has approximately 200.

The brief of the Regional Economic Council of Western Quebec also outlined grievances concerning bilingualism, although the NCC is more favourably disposed towards that subject than is the city of Ottawa. The RCMP which patrols the promenades and parks does not have the necessary number of bilingual men for this work. As is the case with all the federal services, the higher on the salary scale you go, the fewer

French Canadians you find.

By giving considerable powers of expropriation to the NCC, the Canadian Parliament has raised a constitutional problem which accentuates the grievances of the Quebec zone when faced with the power of this federal body on Quebec territory. This right to expropriate is contested by experts. An Ontario citizen has questioned the validity of the law in the courts; the case went to the Supreme Court of Canada, which, in 1966, upheld the law as the Court of Exchequer had done. I am not going to dwell on this point, since another article in this collection deals with this disturbing extension of federal power into the realms of provincial jurisdiction over property, civil rights and matters of a local nature.

Mr. Johnson's attitude

During the past few months, debate on the subject has taken on a greater dimension, and vigorous intervention on the part of Quebec may result. In April 1967, Prime Minister Johnson announced that he would be having talks on the question with the federal authorities, without awaiting the completion of the study of the Commission on territorial integrity. This study is supposed to examine the problem and present a report at the end of August, 1967.

The Regional Economic Council of Western Quebec suggested that a provincial commission be set up to exercise the NCC's powers in the Quebec zone. This commission would receive the same federal contributions, and would also have

the power of a regional government, especially with regard to the zone's intermunicipal services: town-planning, property appraisals, a shared transportation system, air and water purification, police, fire protection, etc.

During a Legislative Assembly debate on the subject in May 1966, Mr. Johnson said that his government is ready to collaborate in establishing a national capital, but only to the extent that Quebec retain its territorial jurisdiction and all its other jurisdictional powers. He said that his government had no intention of giving up land to Ottawa. Mr. Johnson added that within a few months' time, the government will present a draft bill creating the commission for the management and development of Western Quebec in order to ensure the development of this area. He said that this body would be able to negotiate with the federal Commission, as well as with the Ontario national capital commission.

Thus, it would appear that the formula for a federal district under the exclusive authority of the federal government has definitely been written off. And, there is nothing to indicate that Ontario is thinking of handing its authority over to the central government in the Ottawa region. On the contrary, the Minister of Municipal Affairs has announced the establishment of a regional government encompassing Ottawa and the surrounding municipalities.

Naturally, the NCC's role raises fewer difficulties on the Ontario side; however, in the Quebec zone, we must have

not only a regional authority for intermunicipal matters, but also a management and development body through which the province will be able to defend and protect the interests of the Quebec zone. The constitutional dispute over expropriation rights could thus be satisfactorily settled, and Hull could have a better share of the federal services. In addition, as Mr. Johnson observed, the people of Hull and the surrounding area would be able to decide for themselves what they would like for their region, particularly with respect to industrial development.

Canada is not the only federation in which the federal capital is not under the central government's exclusive jurisdiction. Mr. D. C. Rowat, who was commissioned last year by the Ontario government to study the question, has cited as examples Vienna, Berne, Belgrade, Moscow (as well as Bonn, which is merely the temporary capital of West Germany).

Within the present context of federal-provincial relations, an agreement acceptable to both sides would appear likely. However, the history of the development of the national capital region should remind us of the necessity in Quebec of constantly keeping a well-trained eye on the encroaching techniques of the central government.

The Social Security Problem:
A Crucial Test of Canadian Federalism

Philippe Garigue*

Social welfare is one of the main concerns of Quebecers today. To them, it is not simply a question of social justice; it is also a yardstick by which to assess the general progress of their society. The conviction is widespread that if the population were generally poor, in bad health and lacking in social security, Quebec would be unable to take on the future. In other words, in the eyes of the vast majority of Quebecers, social security can no longer be viewed simply in terms of charity or justice; rather, it is seen as special legislation adopted in order to enable the needy to become, like everyone else, responsible contributors to the development of their country. Since 1963, and the Boucher report, this idea has been the basis for Quebec social policy, and is regularly endorsed as such at federal-provincial meetings.

Quebec must escape from the vicious circle
of under-development

The population of Quebec wants to get out of a deadlock situation. In actual fact, the majority of Quebec's population has lived and is still living in a vicious circle.

* Mr. Garigue is Dean of the Faculty of Social Sciences at the University of Montreal.

Quebec has a relatively weak economy, and a high rate of unemployment; its average annual income is lower than the Canadian average, and it has a lower standard of health than that of all the other provinces. Lastly, its level of education does not meet the demands of an advanced technological society. What this situation is costing us can be seen by comparing government expenditures on social security in Quebec and Ontario. Ontario has a million more inhabitants than Quebec; and yet, in 1962, Quebec spent approximately twice as much as Ontario on the following social programs:

<u>Program</u>	<u>Quebec</u>	<u>Ontario</u>
Aid to Unemployed:	\$35,830,000	\$16,310,000
Mothers' Allowances:	\$23,500,000	\$14,230,000
Child Welfare:	\$60,520,000	\$13,650,000

Although the three aforementioned areas are part of a joint federal-provincial program, the fact remains that with regard to social assistance, Quebec has always had a heavier burden to bear than Ontario or any of the other provinces. The percentage of the budget allotted to welfare in Quebec fluctuated between 10% and 15% from 1955 until 1965. The same figure for Ontario was between 5.5% and 7%. Nor should the federal government's contribution be exaggerated. In Mr. Lesage's 1966 budget, federal contributions accounted for only \$9.5 million of the \$237 million allotted for family and welfare.

Certainly, we acknowledge the efforts made in the past to improve living conditions among the populace; nonetheless, although there has been an improvement in certain areas, we

must admit the widespread failure of social legislation in Quebec. Despite the scope of our expenditures, there is no valid indication of a basic improvement in the situation over the past ten years. In fact, the most recent statistics show that Quebec is still giving priority to unemployment, poor health conditions and a great number of other social problems. There has been a serious delay in the drawing up and implementation of social legislation. Social legislation is a far-reaching measure; hence, its important effects are only felt in terms of generations. For example, the aim of the pension plan, in operation since January 1, 1966, is to provide old-age pensions and insurance protection in the event of sickness or death of heads of families. However, the effects of this plan will not be felt for several decades. Although the hospitalization insurance plan offers only partial protection against sickness, its effects have been more readily apparent. But there again, rapid progress is inhibited by budgetary considerations.

Poverty is not the only serious problem currently facing Quebec. Unless something is done to arrest the rapid decline in the birth rate, it will seriously affect the pace of future development. In a very real sense, the population question has become a top priority matter. Thus, as a result of the Union Nationale's first budget, Quebec became the first province to set up its own family allowance plan. The present plan differs from the federal one which has remained virtually

unchanged over the last twenty years. When the provincial program was instituted, the Family and Welfare Minister stated:

We have two specific goals in mind in establishing this family allowance policy. We wish to make quite clear our intention to put the family allowance plan under Quebec's jurisdiction since, as I see it, this area of jurisdiction is a provincial one. Secondly, we wish to promote a birth policy capable of checking the present decline in the birth rate.

At the present time, with its pension plan, hospitalization insurance, family allowance and some thirty Quebec laws for the protection of children and juveniles, the province now has the basic components of an autonomous, social security policy. These various pieces of legislation still have to be integrated in order to eliminate the contradictions which result from the piecemeal collection of different laws. In addition, the rates must be scaled to correspond with the various standards of living. The only remaining important task will be the repatriation of unemployment insurance. However, it is unlikely that the total repatriation of social policy will radically affect the social security picture in Quebec. Quebec has always upheld the idea of provincial autonomy in social matters as Mr. René Lévesque's brief, submitted to the 1965 conference on poverty, clearly showed:

For constitutional reasons, and for the sake of efficiency, the Quebec Government is the only one which can and should envisage such a policy and apply it within its own borders. It follows, therefore, that Quebec cannot allow the Canadian government to assume this responsibility. This does not mean, however, that Quebec is closing the doors

on interprovincial cooperation and mutual consultation.

Our most urgent task: integration of economic and social security policies

While the declarations and the steps already taken do affirm Quebec's autonomy in social security, will they also lead to the desired development? Past experience proves that it is not sufficient to spend huge amounts of money in order to obtain concrete results, i.e., to redirect the greatest possible number of people receiving assistance into productive streams. It takes much more than money to eliminate poverty and misery. Quebec needs a general welfare policy capable of achieving dynamic social transformations. The vicious circle of economic setbacks and low scholastic standards will have to be broken; and those areas with chronic social problems will have to be eradicated. But, in saying this, we are already out of the field of social legislation, for we cannot really build a preventative social policy without the support of a policy of economic development. A country's economic and social security policies cannot be viewed separately.

This lack of integration in Quebec, this delay in putting a coordinated policy of development into operation is reflected in the high rate of government expenditure on social security.

Practically speaking, Quebec does have autonomy in legislating social security, but its social legislation cannot really be put into effect, because its present economic

development doesn't keep pace with its needs. Social and economic policies must therefore be coordinated so that they are mutually interdependent and immediately effective.

We are not, here, invoking the "abstract panacea" of economic planning. Certainly, foresight and organization are necessary. But scientific and industrial progress is as important in Quebec as social planning. Scientific and industrial progress is the major factor in economic growth, and it also symbolizes an increase in competence on the individual level. It is through economic action and innovation - provided that adequate resources are put at the innovators' disposal - that Quebec will be able to eliminate its present problems of poverty, health and want. A readjustment in our thinking on social action is in order; we must stress the fact that in the twentieth century, man cannot materially improve his lot if he lacks competence in the scientific and technological fields. There is only one solution to Quebec's social security problems and that is to utilize the people's intellectual resources, their efficiency and skills; to promote social progress by creating as independent an economy as possible through technological advancement in the most vital sectors. Quebecers must come to grips with science and technology - for these are the factors that ultimately determine a nation's future - if they wish to fulfil their ambitions in the field of social welfare.

Social Security is currently caught in a deadlock

Canadian federalism is being submitted to the crucial test on the problem of social security. As long as we have the present Constitution, it will be impossible for either the federal or the Quebec government to make any substantial improvement in living conditions in Quebec. The federal government does not have constitutional jurisdiction over social legislation; the Quebec government does not have complete control over its own economic development. As a result, long-term welfare planning is also impossible, since it lacks the dynamic support of industry, banking and finance.

Thus, although a nation's growth is not entirely dependent on constitutional factors, political structures do play a fundamental role in determining development policies. To talk about social progress or economic growth without considering the constitutional factor is to show scant knowledge of the channels through which social improvements are achieved. Liaison must, therefore, be established between Canada's political structures and the factors which influence Quebec's scientific, technological, economic, and social progress. In other words, there are two possible solutions: total autonomy for Quebec, i.e., the establishment of a nation-state; or the remodelling of the present Constitution to allow for a special status within a new federalism. We must choose, for only a fundamental, structural innovation can give Quebec what it now needs to fulfil the social aspirations of its people.

Marriage and Divorce in the Canadian Constitution

André Morel*

Ever since the British North America Act has been brought to the tribunal of public opinion, very little thought has been devoted to the clause in our constitution (Section 91, paragraph 26) which gives the Federal parliament the exclusive right to legislate on marriage and divorce. Unlike many other questions, this one has not had the good fortune to excite our interest. And if an ever-increasing number of people in Quebec are reacting against what might be called the scandal of legislative divorces, they have objected more to the procedure than to the fact that it is Ottawa rather than Quebec that has all the authority in this matter. Nonetheless, among those interested in constitutional revision, there are some who do want the Federal government to give up the right to legislate on marriage and divorce. If this were done, provincial control over civil rights, which was impaired in 1867, would be fully restored. Because of its special system of private law, Quebec has more compelling reasons than any other province for wishing to change the existing order of things. But does this mean, as some people have proposed, that a transfer of power would suffice to put an end to the unrest and inconvenience created by the present state of affairs? The

* Mr. Morel is a professor on the Faculty of Law at the University of Montreal.

problem is perhaps more complex than we tended to think. In order to give a brief but comprehensive sketch of an equitable solution to the problem, we must first become aware of the full scope of this apparently minor question. This will enable us to see that what, nowadays, appears to be an outdated division of powers was, a century ago, a necessary compromise. We may also see that some of the considerations which made acceptance of this compromise necessary may still play a role in determining the type of special status we would like to see in the Quebec of tomorrow.

A necessary compromise in 1867

The question as to which order of government, federal or provincial, would have jurisdiction over marriage and divorce was apparently not a great issue for the Fathers of Confederation. Right from the Quebec Conference in 1864, it was agreed that this matter would be controlled by the "general parliament", and all the subsequent documentary evidence shows us that this decision was maintained. However, the motives of our constitution-makers in this matter did not appear equally conclusive to all those who had to take a decision on federal union. The debates which took place in the Legislative Assembly of United Canada in 1865 remind us of this fact.

Among the French-Canadian delegates, there were several who voiced their objections to having the future central parliament take over the right to legislate on marriage and divorce. What use would be made of this law by an assembly composed mainly of English Protestants? Was civil marriage

going to be legalized and were divorce tribunals going to be created in a province where neither was wanted? Many feared this and one even declared that "if the right given to the federal legislature on this question means anything, it is that and nothing else". Before long, they were saying, mayors will replace priests and will officiate at weddings. Furthermore, it was even emphasized, and quite rightly, that this would mean that a large part of family law would be removed from the control of the local legislature; it also meant that a great number of laws under the Civil Code (which had just been written) were in danger of being replaced by features of the common law.

In fact, none of these fears were totally unwarranted. However, only the spectre of civil marriage, which had been touted by a few members, was apparently worth exorcising. It was decided at the London Conference of 1866 that the celebration of marriage would be controlled by the provinces and this was intended to reassure Catholic opinion. As far as the rest was concerned, and apart from this one exception, the representatives of Lower Canada kept to the original plan. Indeed, this plan appeared to offer opportunities which could still be made the most of, as a result of the parliamentary discussions of 1865.

Solicitor-General Hector Langevin was basically voicing the French-Canadian viewpoint when he said about divorce: "We shall not recognize a fact that we have always refused to admit... as a member of this conference, without recognizing or creating a new law, and by declaring as I am doing now that, as Catholics, we do not recognize divorce, we have had to decide which

legislative body would be entrusted with this power which we find in our constitutions. After thorough deliberation, we decided to let the central legislature handle this matter, believing that we could thereby hamper a procedure that is nowadays easily carried out". Joseph Cauchon added, "As far as I'm concerned, since this power has to exist somewhere despite us, I would rather see it removed to a distance, far from us". Conscience was saved by putting into more tainted hands the responsibility to effect divorces. They pretended to believe that the number of divorces would be reduced because of the difficulties involved in going through the Federal parliament. "The higher the tribunal...the less frequently divorces will occur".

But Langevin was not telling the whole truth. And Liberal Party leader A. A. Dorion underlined this fact by rightly observing that if the government's intention was really to prevent Lower Canada's Catholics from divorcing, it was much better to let the local legislature handle this matter since all the Catholic members would make it a point to vote faithfully against all divorce bills presented to the House.

In fact, what no one dared to admit was that the French Canadians, during the constitutional conferences, had to give up in front of the firm requirements of the British who did not want to let their fellow Protestants be ruled by a Catholic majority which would elevate its intolerance to a moral duty. Under the Union, was it not a fact that our

delegates made use of all the parliamentary tricks available in attempts to sabotage each and every divorce petition presented to the legislature? One might say that it was only under protest that they resigned themselves to seeing a few citizens - four to be exact between 1841 and 1866 - obtain the dissolution of their marriage thanks to the combined efforts of the Council and the Protestant majority in the Assembly. All manoeuvres seemed legal in the Catholics' eyes when it was a matter of dissuading prospective divorcees. Such methods were not without effect, as Joseph Cauchon noted with pleasure in the Journal de Québec: "It is so expensive to divorce and the sense of dishonour is surrounded by such hideous publicity and such lugubrious solemnity that nearly everyone would avoid facing this dreadful ordeal".

The French Canadians could not understand what right Parliament had to "put asunder commitments that God himself has made eternal". Thus, we can easily guess what opposition a general law on divorce would have encountered. When, in 1857, Great Britain adopted the Divorce and Matrimonial Causes Act few delegates wanted Canada to follow its example.

However, it was John A. Macdonald himself who, to avoid displeasing the Catholic electorate, risked alienating Upper Canada's opinion by declaring that the government would take no action.

Under the circumstances, it was unthinkable to let the local legislature handle divorces, because this would have meant that the British Protestant minority of Lower Canada would

have had to submit to the yoke of the Catholic intolerance of those days. It would thus have lost the right to obtain divorces through private bills. There were even some members who declared that "Confederation might not have taken place" if Lower Canada had not agreed to the central parliament's jurisdiction in the matter of divorce. Furthermore, and strangely enough, Catholic opinion agreed to this, since it was thought that the categorical opposition which the provincial legislature would have been obliged to take on any divorce bill could only engender serious discontent among the Protestant minority in Quebec, and consequently incite Great Britain to intervene and pass a law legalizing divorce in the province. Therefore, it was better in the long run to accept a compromise than to initiate a state of crisis which could have been harmful.

On the other hand, the French Canadians were confident that the Federal parliament would never dare - if only because of political opportunism - impose on Quebec marriage and divorce legislation which would displease the majority of the population. This reasoning was to prove sound. The future would show that Quebec had nothing to fear from Ottawa in this field. All those who are uneasy about the matter may find reassurance in Ottawa's lack of initiative over the past century. It shows that the agreement of 1867 was only meant to safeguard one minority's right to divorce, and that this right could not be exercised had Ottawa not been its guardian. But at the present time is this state of affairs still valid? We may well wonder.

In 1967: An obsolete situation

Those who readily accept the compromise which formed the basis of the agreement reached by the Fathers of Confederation, and who furthermore think it is primordial not to change anything, usually start by emphasizing that the Protestant minority of Quebec must retain the protection it was given in 1867. Of course, and this is a known fact, French-Canadian opinion has evolved during recent years. It is no longer as one-sided and as intransigent as it used to be on the question of divorce and on numerous other religious and moral questions. But even today, who would dare predict with any confidence that Quebec's legislature would adopt a liberal attitude if it were called upon to take a stand on a divorce bill? In Quebec, public opinion is capable of a fantastic about-face. On other less emotionally-charged questions, we have, for some time, been witnessing clashes which would render the most optimistic person skeptical. Once the Legislative Assembly had the power, would it dissolve all marriages upon request, without creating an issue? In any case, we can be sure that for the time being it definitely would not go so far as to give divorce jurisdiction to the common law courts.

Therefore, it is normal that any proposal to transfer to the provinces the power now held by Ottawa on marriage and divorce should be rejected by all those who are preoccupied with maintaining, for the minority in Quebec, the right which has been traditionally recognized and which this minority is

not prepared to give up.

On the other hand, those in favour of the status quo will also invoke the necessity of legislative uniformity. This could not be efficiently obtained without the intervention of the Federal parliament. This fact was recalled by Senator Roebuck who stated during a debate on the subject in the Senate in 1960: "It is most important that human rights in this respect should bear some degree of uniformity throughout the provinces". This argument is not new and it is almost certain that it played its role during the talks which led to Confederation. It is a known fact that in 1858 London sent a letter to the Governor-General to inform him that it would be opportune for Canada to adopt a divorce law similar to the one just voted in Great Britain, because it would be dangerous for public order if "colonial law on the subject of marriage and divorce was essentially different from that of the mother country". If this legislative policy was to be acted upon some day, the desired uniformity would certainly not have been achieved by allowing each province in the new federation to act as it pleased.

Alpheus Todd in his work, Parliamentary Government in the Colonies, similarly justified the granting to the Federal parliament of jurisdiction over marriage and divorce.

This argument, as we must admit, is now outdated. We can always say that for the past century the Federal government has never attempted to standardize laws on marriage and divorce throughout the country; that, on the contrary, provincial

laws on divorce that date from before Confederation (in Nova Scotia, New Brunswick and Prince Edward Island) have been allowed to stand without any protest from the Federal government, even though the provisions they contain are totally uncoordinated both in themselves, and in relation to the laws of the other provinces. This means either that uniformity was not as desirable as it was said to be, or else that it could not easily be put into effect. This is an additional factor which militates in favour of bringing back to Quebec the jurisdiction over marriage and divorce.

Messrs. Faribault and Fowler in their book, Ten to One, underlined, and rightly so, that these two questions are "of an essentially private nature". Since these items depend on federal law, the complete control that Quebec should have over its private law is largely diminished. It is abnormal to see Quebec powerless to deal with marriage, despite the extremely close ties which relate this matter to many other aspects of civil law, when, on the other hand, the Federal government which has the power is not interested because it is not in a position to express Quebec's ambitions! This has never been clearer than during the past few years when, in Quebec, there has arisen a desire to rejuvenate civil law especially on matters involving the family. But how can this desire be transformed into concrete reality when so many problems (one can mention age limits, consent and hindrances to marriage, rights and duties of spouses, legal separation, etc.) are currently not under provincial jurisdiction? The province is, if not

paralyzed, at least greatly handicapped in its actions; occasionally, it impinges upon federal power, as was the case in 1954 (alteration of Article 188C on legal separation), and in 1964 (some dispositions of the famous Bill No. 16). Furthermore, what is to be said of the situation in which the Office for Revision of the Civil Code finds itself? The reform projects of its committee on family law are a dead letter as long as Ottawa keeps its power to legislate on marriage and divorce. Such an important organization as this cannot be indefinitely prevented from action. The uneasiness which results only underlines more strongly the extent to which the division of powers on this question has become obsolete.

Furthermore, it must be noted that if there was a time when marriage and divorce could be thought as being under the jurisdiction of the Federal government, this way of thinking is nowadays being abandoned. The argument which is being heard more and more is that marriage and divorce are too intimately tied to the culture, to the traditions and moral ideals - which vary considerably from one region to another - not to be placed under the control of the provinces. Even English Canadians are beginning to embrace this point of view. Peter O'Hearn, for example, in a recent book where he proposes an outline for a new constitution, categorically affirms: "If provincial autonomy means anything it means that control over marriage and divorce legislation is an appropriate provincial paramount power and is not a suitable field for federal law ...".

This new conception which views marriage and divorce as a provincial concern has in fact been accepted by the Federal government itself. Is not the Federal government's almost total abstention from legislating in this field since 1867 an implicit acknowledgment of the need to respect some diversity among the provinces?

If it is beneficial to all concerned that the Federal government renounce its jurisdiction on marriage and divorce, one can add that this reform is imperative and is particularly urgent in Quebec because of the profound changes that are affecting the traditional concepts of the family, and also because these changes will have to be expressed in the Civil Code now being drafted. Nonetheless, Quebec itself is the main obstacle to such a change. It must be taken into account that such a transfer of power can only be possible if it doesn't mean the suppression of a recognized right belonging to an ever-increasing fraction of our population.

And it is hard to see how this condition could be fulfilled in a satisfactory way if it did not include a constitutional guarantee of the right for every citizen to obtain, for certain specified reasons, the dissolution of his marriage by appealing to a common law tribunal. The legislative divorce scandal has gone on for too long. But are we ready and prepared to go that far?

Quebec's Role in the Field of Criminal and Penal Reform

Denis Szabo *

A policy on criminal and penal reform is inseparable from social policy and, in fact, constitutes an integral part of it. Indeed, whoever speaks of policy speaks of options, priorities and choices. These are essentially dependent upon the overall material well-being of the population (standard of living, extent of social security measures, etc.) and on the ethical standards inculcated in us by family training and formal education. These two factors are obviously interdependent; scarcity of material resources causes more jealousy among people, and less tolerance towards one's fellow man - the struggle for both a minimum and a luxury standard of living being a ruthless one. It now appears that the moment has arrived for putting questions of criminal policy back into the general context of governmental social policy.

It is a fact that a large part of criminality is determined by standards of social or mental hygiene, by economic policy (labour policy included), and by education (professional training included). The administration of penal justice should take these factors into consideration in the largest measure possible. Indeed, penal justice has to deal with the results of these social conditions. Thus, it would seem indispensable

* Mr. Szabo is Director of the Department of Criminology at the University of Montreal.

that the administration of penal justice be adjusted to include the general causes of this criminality against which this justice is supposed to protect us.

The present confusion over jurisdiction

In this field, we have a confused mixture of federal and provincial jurisdiction: like the penal code, the system of parole falls totally under federal jurisdiction, whereas the administration of justice falls under provincial jurisdiction. While the federal government has its own police force that is responsible, among other things, for the administration of certain federal laws, such as those on narcotics, the provinces, indeed the municipalities, are responsible for maintaining public law and order. While penitentiaries housing prisoners sentenced to more than two years come under the federal Solicitor-General, the prisons accommodating the rest of the penal population come under the jurisdiction of the provinces.

Furthermore, although there exists a federal law pertaining to juvenile delinquency, the courts and the agencies which look after them are provincial. Probation does not depend on federal departments, nor does the training of superior and subordinate personnel for the various departments of judicial administration. We will subsequently examine the main fields in which a policy on crime is applied, and will indicate the probable, and some of the desirable, tendencies towards change noting, in addition, the role that the provincial body politic could play in this area.

Our Methods of dealing with crime must be fundamentally revised

This concept is currently undergoing a radical change. In actual fact, the use of severe penalties to prevent crime derives solely from the policy which has been adopted and applied in most Western countries between 1850 and 1950. We are just beginning to remember Beccaria's advice, proffered two hundred years ago, on the preventive effect of repression. The fear of being caught exists to the extent that the police force is effective (while still respecting the rights and dignity of the citizens). This fear has a more preventive effect than punishment does. But we have just realized that preventive measures have very little effect on certain types of criminal activity attributable either to mental or social health factors (psychopathic delinquents), or to the effectiveness of organized crime in the face of a weak system of social protection (i.e., organized racketeers).

It has also been discovered that criminality, far from being restricted to a very small segment of society, on the contrary encompasses a very broad social stratum, including adolescents (a considerable number of whom commit all kinds of minor offenses without usually even being caught), and the middle and upper classes (white collar criminals). These segments of society perform their anti-social actions with almost complete impunity, particularly if the administrative organs of justice and social protection are not furnished with tools to enforce respect for the letter of the law.

The confusion, born from the recognition of the inadequate nature of our system of prevention and social protection, has culminated in the establishment of a committee and of an inquiry commission. They are authorized to set out recommendations for the remodelling of the whole organization of penal justice; on the federal level, a committee, under the chairmanship of the Honourable Judge Roger Ouimet, was set up when Mr. Guy Favreau held the portfolio of Justice. The provincial committee is under the chairmanship of the president of the Bar Association, Mr. Prévost.

In imitation of the Katzenbach Commission, established by President Johnson in the United States, these important bodies will undertake a minute review of all the machinery involved in the administration of justice, each functioning within the framework of its own jurisdiction. For observers of policies on crime, the formation of these two teams of investigators is symptomatic.

In view of the concern for the improvement of living standards as well as moral education, the moment appears to have arrived in Canada, and in Quebec, for a remodelling of the systems of social protection, for a revision of the fundamental concepts of the dissuasive effect of punishment and the use of imprisonment. Indeed, our country has sufficient financial resources, and humanitarian ideas have developed to the point where it would be possible to envisage certain penal and correctional reforms for the second hundred years.

Nonetheless, however broad the reforms advocated by the committee and the commission may be, the acceleration of economic and social changes which, in turn, affect the realms of psychology and ethics, is such that even periodic revisions every ten or fifty years (as for the penal code) will be quite insufficient.

We will have to advocate the establishment of permanent councils both in Ottawa and in Quebec. These councils would be in charge of overseeing the workings of criminal justice, and of recommending reform measures to the executive and legislative powers, to increase continually their effectiveness. One step has been taken in this direction by the creation of an advisory council on the administration of justice. It should, however, be endowed with an infinitely greater number of means than it has now, in order to fulfil its function of making the administration of justice more progressive. In particular, research should be undertaken to help adapt the system of social protection to criminality as it exists today. "Justitia perennis" together with "philosophia perennis" should be attuned to change in the modern world, if they don't want to be written off as useless.

A larger role for the courts of justice

I will not deal with the complex problem of federal and provincial jurisdiction in this article. However, I wish to point out that modern criminology teaches us that the administration of justice must increasingly make room for more collaboration on the part of the magistrate with other disciplines and other specialists.

Our courts should be endowed with centres for crime assessment based on personality examinations, social environment, etc., of the accused. In this way, the court will be better able to weigh the measures it intends to take with regard to the convicted.

Today, one can no longer conceive of a judicial system lacking a sizeable state probation service. It will be equally difficult to justify exclusive federal jurisdiction over parole. It is not to be excluded that other functions devolve onto the magistrates; for example: having the judge supervise the post-sentence procedure (paroles included), or having magistrates oversee, in particular, the preliminary investigation (including the police investigation stage).

Perhaps this will result in the setting up of positions for junior magistrates, in the manner of junior crown attorneys. In all these areas, provincial jurisdiction is either excluded, or else it is inadequate. New career classifications connected with the courts will likely emerge: besides the permanent attorneys, there will be either public counsel, or else lawyers supplied by a provincial system of judicial aid, to ensure equality before the law especially for those who cannot afford legal assistance. Here again, the jurisdiction is a provincial one.

At this point, we must raise the problem of the division of duties between penal and social administration agencies. It does appear that many of the cases before the courts today (e.g., vagrancy, drunkenness, etc.) could well be referred to private

or public agencies in the community. The differentiation between roles, and the consequent increased efficiency in the administration of justice, will perhaps be most thoroughly achieved by changes to the Criminal Code. This would "depenalize" a large category of criminals who, in reality, are "social cases".

Police services in tomorrow's society

In the province of Quebec, most of the policing is done by the provincial and municipal forces; the role of the RCMP is relatively limited. A considerable amount of work remains to be done in this area. As soon as possible, a police act ought to be passed to create an independent commission that would supervise police activities. In particular, it should supervise the standardization of criteria for the selection and training, etc., of police forces across the province. Large police forces, such as that of Montreal, and the provincial police, should make major advances towards increased professionalism. As has been suggested in the U.S.A., and in line with the European tradition, these police forces should introduce different recruitment levels. In this way, people with advanced academic training would be attracted to police work. Policemen with university training could thus be recruited under such a system, and the quality of police protection would be considerably improved. Detective services could also undergo a larger centralization on the provincial level. The prospect of such a centralization should not upset the proponents of municipal autonomy, since the maintenance of order, i.e., the functions of the general police, could continue to be under local authority.

Detention services

Modern penologists are unanimous in the opinion that detainment should serve to prepare the prisoner to face, under the best possible circumstances, the challenges of a free life. Eliminatory punishments (executions, deportations, etc.) are practically non-existent. The cost of incarceration in maximum security institutions is approximately \$5,000 annually per prisoner (without taking into account the cost of assistance to the prisoner's family, or the fact that the prisoner himself has no earning capacity). Hence, imprisonment, as the major form of social reaction against crime, has seen its day. Progressively, alternatives to imprisonment will become more and more common. These include night prisons that permit the sentenced to work outside during the day; weekend prisons; and compensation to victims through profits from prisoners' labour. Experiments that are currently going on in several countries show that only a small fraction of the present prison population should be held in institutions as expensive as the ones we provide today. Clinical physicians are equally unanimous in deploring the anti-social effects of the actual system of imprisonment when its purpose is exactly that of social rehabilitation.

In the light of what we have just seen, it would be absolutely necessary to revise the costly construction plans which burden the provincial budget. As Dean Maxwell Cohen remarked a year ago, at the first convention of the Quebec Society of Criminology, we must continually re-examine the "criminal" for the

purpose of adopting new measures of social protection in the face of changing conditions. If we are acquainted with the professional personnel of our provincial detention centres, we must admit that a great deal of progress has yet to be made in this area where there is no federal interference to hinder our freedom of action. A bold policy is within reach; nothing could be more costly than the status quo.

Juvenile delinquency

In this field, prevention should take precedence over all repressive measures. It should be exercised on the individual level (by rooting out delinquency in the school system, for example) as well as on the community level (for example, by organizing recreation centres). Despite the considerable progress made over the past twenty years, much remains to be done in this exclusively provincial sphere of action. Let's cite as an example: the re-organization of the relationship between the social welfare courts, which are under the Department of Justice, and the counselling services, which belong to the Department of Family and Social Welfare; the development of post-institutional aid; the expansion of those police services which deal with juveniles; and the introduction of reforms such as the creation of highly trained female divisions that could play a major preventive role with respect to adolescents - as the experience of many other countries has proven. In particular, we must aim for the idea where juvenile court is considered to be a last resort, to be used only when all other collective or individual measures have failed. But at that

point, they must become real courts, where children's rights will be protected by a lawyer assigned to the position, if necessary.

Personnel training is the cornerstone of all reform

Here, the changes to be carried out are such that very different personnel from the one we have been used to must be trained in order to implement future policies with regard to crime. Two considerations should determine the nature of this training: the first is the complex nature of crime and of the social reaction it evokes. It involves the application of the principles of the human sciences, of society, and of the law. Thus, the approach should involve various disciplines.

The second consideration is the absolutely necessary co-ordination of social protection services. These water-tight compartments (courts, police, counselling services, prisons, probation, the juvenile division, etc.), that operate in a vacuum, should definitely be abolished. Because of the costly functioning of all these services, we cannot help but ask whether our social protection system is producing worthwhile returns. This naturally raises questions as to its efficiency.

This horizontal grouping would eliminate the present rigidity now resulting from a vertically-structured organization. Such an overhaul presupposes the creation of a large judicial administration that, like the health services, for example, must have its own organization and professional classifications. Do we need to specify that this field of education is exclusively provincial?

The indispensable role of research

Let us add an additional comment on the subject of research. This activity is indispensable, if we are to improve the teaching of criminology in those establishments which train personnel, at all levels, for the administration of justice.

Research should be equally present in governmental structures, where policies could not be formed effectively without a basis of scientific information. The field of justice is no exception; its efficiency is measured by its flexibility and by its ability to meet collective needs.

If a policy on crime and penal reform stems from social policy, it follows that the provincial Department of Justice should expand its divisions, incorporating more and more specialists in criminology. Its function as legal advisor to the government should only be one of many equally necessary activities. A large Department of Justice should play an increasingly important role in the line of public service. It should include professional, para-professional, and other classifications, following the pattern set by the Departments of Health, Social Welfare, Education, etc.

However, the state's role should not be exclusive in this field: a monopoly is harmful whenever individual liberties are at stake. This is why semi-public bodies (those independent commissions which utilize the department as an intermediary, but which are directly responsible to parliament) should be brought

increasingly into use. In particular, I am thinking of a police commission, in charge of the supervision of police activities; a commission on criminal and correctional justice that would evaluate social protection measures; and other commissions to be set up, as the need for them becomes apparent.

The administration of justice, however, includes another factor not present in fiscal or health administration. Our security and, above all, our liberty are dependent on it. Many a wise man has said, in one form or another: "fiat justitia pereat mundus".

The role of Quebec will have to be a preponderant one

What will be the role of Quebec with regard to a policy on crime during our second century? In the light of preceding observations, it is possible to conclude that it will be a preponderant one. Why? Two major reasons come to mind: justice, together with religion and education, is the most direct expression of a culture. The sensitivity rooted in each of us, underlying our moral consciousness, responds more directly to questions of justice or injustice than it does to any other event or social factor. One cannot delegate this prime moral and cultural role to remote authorities. Moreover, British, and particularly North American, tradition has always been very careful to ensure that excessive centralization does not deprive its citizens of this justice, embodied in those institutions which belong to them, and are closest to them.

However, this tradition has found itself in conflict with the need for greater efficiency in social protection. How can we combat new and dangerous forms of delinquency through the ridiculously futile means provided by collective communal democracy? Still, Quebec must find, at the provincial level, a satisfactory solution to this dilemma.

Second, education, a prime provincial responsibility, should take precedence over all the reforms to come in judicial administration: a) university and technical training which will supply personnel for the departments of judicial administration; b) re-education of juvenile delinquents and, where possible, social rehabilitation of adult criminals; c) education (and perhaps even re-education) of public opinion with respect to crime and the criminal.

It is perhaps on this note that one could conclude that the virtues of justice based on reason and forgiveness should increasingly replace that instinctive justice which is based on vengeance. Only those whose trust in humanity is very weak will prevent this evolution. Not all the dreamers and naive people can be classed in the same category, as certain people are wont to do a little too quickly. For it is certain that, if we do not appeal to the best in man, we will never succeed in keeping his bad tendencies within the limits which guarantee the morality of his actions.

Constitutional Implications of a Housing Policy

Paul Sauriol*

In times past, the state dealt only with housing where urban planning and safety were concerned; private enterprise could take care of the construction of houses because it was a sound investment that brought back good returns. The situation has changed gradually since the First World War, due to several factors, and the modern state has to intervene increasingly in this field. In Canada, the economic crisis and the restrictions during the Second World War slowed down residential construction for fifteen years. We have not had to rebuild towns devastated by bombings, as some other countries have, but the increase in the population, both from the natural increase and from immigration, and the migration of a great number of rural residents towards the towns, have created a large demand for urban housing.

For twenty years residential construction, despite a strong stimulus given partly by all governments, has only met new needs and has not allowed a suitable renewal of existing housing nor the replacement of ancient buildings. The increase in building costs makes new housing unattainable to middle and lower income groups. The penury in housing is such that a

* Mr. Sauriol is associate editor of Le Devoir.

rent commission, which was a war measure, has had to be maintained.

Our leaders have not managed to establish a truly efficient housing policy. The measures adopted had their merits and yielded some results, but the housing crisis has remained acute for the past twenty years, especially for the lower income groups. This failure could probably be attributed to several causes, one of which is political and constitutional. The fact is that the governments which are not only responsible but also competent and have complete jurisdiction in this field - the provinces and the municipalities dependent upon the provinces - do not have the necessary fiscal and budgetary resources to tackle this major problem of our society. At the same time, the central government has full fiscal powers but can only deal with housing indirectly.

Federal Law

This disproportion between the provinces' responsibilities and resources is at the root of the many interventions by the central government in matters of provincial competence; housing is but one case among many. As early as 1918, Ottawa had put at the disposal of the provinces funds to be loaned to municipalities for residential construction; however, the first general law on housing voted by the Canadian Parliament dates from 1935; it was followed by the laws of 1938 and 1944 and finally by that of 1954 which has since been modified several times.

The national law on housing was meant mainly to stimulate construction while guaranteeing mortgage loans granted by various finance companies, and the Central Mortgage and Housing Corporation also loaned funds made available by the central government. This was meant as an encouragement by easing credit.

This federal legislation was enlarged with time, especially during the past few years, to aid the wiping-out of slums and to promote urban renewal through various grants. If it is to be valid, this legislation, in an area of provincial jurisdiction, requires the support of the provincial government in question. However, this method still places the provinces in front of an offer that they must accept or reject; the citizens are not free to contribute (or to refuse) their share to these grants even if some provinces are not using them; the provinces are confronted with a de facto situation.

As in some other shared programs, Quebec did not get its rightful share of the credits and grants dispensed by Ottawa for public housing, in accordance with the NHA. On top of the guaranteed mortgage loans that house buyers have been able to secure, credits were advanced in Quebec to nonprofit organizations or to limited dividend companies for the building of low rent housing, especially for the aged. But as far as low rent housing financed and backed according to Article 35A is concerned, Quebec has only obtained so far 796 dwellings (Habitations Jeanne-Mance) while in the rest of Canada well over ten thousand were built.

It is true that the Quebec provincial authorities are partly to blame for this situation, but if Quebec and, even more, Montreal municipalities were not able to derive a greater share from these NHA projects, it is also because the conditions specified did not correspond to Quebec's needs and because, in many cases, federal authorities showed little enthusiasm for the Montreal programs and even opposed them.

Things are changing. The law was relaxed in 1964 and urban renewal planning and projects for the construction of public dwellings are being undertaken in several cities and towns in Quebec including "La Petite Bourgoigne" in Montreal, for which Ottawa recently granted \$35 million, and we hope for an early start on construction. However, in 1965 and 1966, one province, Ontario, was able to obtain credits provided for by Article 35D for "the construction or the purchase of a public housing project". The annual report for 1966 of the CMHC reveals that the Corporation has granted seventy loans to the Ontario Housing Corporation totalling \$59.2 millions to build 4,583 dwellings in twenty-eight municipalities. The impression that we get is that Ontario alone is ready to profit from the relaxation in the law and these modifications appear to have been tailor-made for that province's needs, even if the other provinces may be able to benefit from it after a while.

Provincial Law

Quebec has a family housing law first adopted in 1948 and later modified several times. This law brings

considerable help to those who can benefit from it, since the provincial treasury pays a part of the interest on the mortgage. This contribution must not go over 3% and is only payable on a total sum of \$7,000; in fact, it is of better assistance than the mortgage guarantee underwritten by federal law to house buyers, but its range is limited.

According to the amendments adopted on March 14, 1967, credit unions and other authorized organizations can lend up to 95% on the first \$13,000 on the true value of a new dwelling and up to 70% on its remaining value. Furthermore, the maximum authorized interest rate, past which the loan cannot benefit from government contribution, has been raised to 7 1/4%. This contribution is only granted to low income families and the income ceiling has been fixed at \$6,000 for a family with three children plus \$300 per additional child.

As building costs are rising, the purchase of a house is becoming more difficult for a relatively low income family. The increase in interest rate reduces the contribution, since the owner must pay the full rate on the amount above \$7,000. Even taking into account that the repayment of the mortgage can be spread over a thirty-five year period, the burden is a heavy one.

From 1949 to 1965 inclusive, 83,254 owners were able to invoke this law; the contributions paid by the service of family dwellings of the Office du Cr dit Agricole have reached the sum of \$74,971,247.34, and government involvement represents

\$191,562,550.25. Mortgage loans amount to a total of \$667 millions. This measure has, therefore, been useful to a middle income group and this is not negligible; but the housing crisis cannot be solved by such limited means.

War on Poverty

It will, therefore, be necessary to have recourse to more energetic means such as subsidized public housing or to similar methods, as, for example, aid to low income groups, to enable them to find adequate housing.

Nonetheless, it is possible that these methods will not be enough and it is probable that the housing crisis will have to be dealt with through the more generalized war on poverty. The Montreal Relief Council has recently published a study on the poverty zones which require priority intervention in Metropolitan Montreal. Even though, in these areas, the slums, the unhealthy or overcrowded dwellings are an important factor and one of the main causes for poverty, other factors are almost as important. Even if we succeeded in giving those underprivileged families healthy and adequate dwellings, the state of poverty in which they live would not be improved upon.

This is why the authors of this study reckon that this fight has to be conducted simultaneously on several fronts. The first aspect is the insufficient purchasing power of these families which means a lack of income. In these families, even when the father is working his salary is not sufficient; it

must therefore be augmented by public assistance which has to be substantial especially for large families.

In these families the children are handicapped by the atmosphere of poverty, poor housing and a social background not favourable to the pursuit of studies; therefore, a special effort must be accomplished in these slum areas to ensure that the children get, as far as education is concerned, a chance comparable to that of the children from better districts. Society must make a special effort in these districts to better the state of health, which is very low, due to a poor diet and to appalling housing conditions, lack of sleep, lack of medical care. An employment and training policy must, furthermore, be brought into effect to enable the heads of these families to better their situation and their income.

The housing problem takes on a new dimension if we put it back into the framework of an overall offensive against poverty in slum areas. For example, as soon as we decide to establish a basic subsistence level of income, through public assistance if need be, the housing problem, among others, will be remedied in many cases by the subsequent rise in income. People who will thus obtain a sufficient buying power will, therefore, be able to find proper housing, leaving, if necessary, these slum areas to settle elsewhere.

In this manner the housing problem can be attacked on a larger scale, and according to a general plan which would, with time, bring a working solution. If so many slums and

unhealthy dwellings are being occupied by people, it is due to the poverty of a wide section of the population living in old districts. We lack healthy dwellings because the families who require them are in no position to buy them and cannot pay the high rents now in effect due to high building costs. The housing market is a false indicator since the low income groups do not have the means to pay rent. Consequently, the older types of houses are being neglected and are deteriorating prematurely. An additional fact contributing to the poor care of houses is the rent control designed to protect low income groups. This is why slum areas are rapidly increasing in older districts.

Although it may appear to be a paradox, the housing crisis in Montreal was aggravated by urban renewal. In order to open new highways, to widen boulevards and to carry out other public works, a large number of old houses and slums were demolished. It is a good thing to eradicate slums and to improve the land value of the downtown area by using it for communal ends more in line with the high retail value of these lands; but it would seem advisable to build other houses for low income groups.

The NHA insists that a municipality which demolishes slum areas should adequately relocate displaced families. We have too often been content to pay moving indemnities while letting those families find new dwellings for themselves. Since these low income families cannot find adequate housing

because of the high rents, the razing of old houses, some of which are still fit to live in or could be repaired, results in the overcrowding of the old dwellings that remain.

Quebec's Role

In order to carry out effective urban renewal and to eliminate slums, the number of dwellings accessible to lower income groups must be drastically increased. And if, simultaneously, we have to mount an anti-poverty offensive in the slum areas with regard to family purchasing power, social security, public education and health, it is obvious that the province must lead the fight since most of the weapons against poverty belong to the province.

It is most probable that the inefficiency noticed in one province in matters of housing is the direct result of the constitutional imbroglio forcing this province to carry heavy social obligations without giving it the corresponding fiscal resources. Up till now, the federal government has helped residential construction simply because it utilized this as a means to control the economy. At the end of 1966, the outstanding mortgage debt was some \$6.4 billion. This was 28% of the whole country's debt. It is an important figure. But the federal law guaranteeing mortgage loans is of no help to low income groups who live under the worst conditions.

The recent provisions of the federal law could be extremely useful to Montreal and other Quebec cities, if the province could have at its disposal the credits and grants from

the federal government which would enable it to provide for the province's needs.

The Legislature has recently started the study of a law to create a Quebec Housing Commission. The commission, following an agreement with Ottawa, could benefit from federal aid and credit amounting to \$400 million; but the programs announced by Mr. Dozois have to conform to NHA requirements. Therefore, this compromise can only be temporarily accepted.

The Pearson government in the Throne Speech of May 8 announced a huge federal urban and housing program, while underlining that the jurisdiction in these fields belongs to other governmental levels. Mr. Dozois declared on the next day that this represented a new interference by the central government in provincial jurisdiction. The compromise that is being negotiated, therefore, comes within the framework of this federal program while at the same time leaving to Quebec some freedom of action.

This is a typical case where Quebec must fully exercise its constitutional rights and where it requires a special status to be able to undertake freely all the necessary measures without having to submit to norms more suitable to the needs of the other provinces. The eventual reform of the Canadian Constitution should enable our province to fulfil its obligations in this field without having to rely on financial aid from Ottawa, that is to say, following a more equitable

fiscal division in line with the social responsibilities
within our Confederation.

Immigration: What is Quebec's Role?

Juliette Barcelo*

The reasons are many and varied but a brutal fact remains: immigration has worked and is still working strongly against Quebec's most fundamental interests since it is diminishing, in an apparently irreversible manner, the proportion of the French-speaking people not only of Canada but also of Quebec. The figures have been mentioned so many times and the numerous warnings have apparently been so completely ignored that the author of this article feels she is nothing but a lost soul crying in the wilderness. How else can one explain the refusal to see that before any other consideration the foremost imperative for national survival requires the maintenance of a demographic equilibrium, unless it is through negligence or an inexplicable naïvety, especially in the context of a Quebec that is increasingly affirming itself and expressing more than ever its will to live? It is not a question of returning to the era of "la revanche des berceaux" (the revenge of the cradle) nor of believing that we are so superior that, when reduced to a minority inside Quebec itself, our province will remain French and claim a special status that it has not yet obtained while we are in the majority. We have only to recall that between 1945 and 1965,

* Miss Barcelo is assistant to the Registrar-General of the University of Montreal. From 1958 to 1965 she was a civil servant in the Federal Department of Citizenship and Immigration and from 1965 to 1966 in the Immigration Division of the Quebec Department of Cultural Affairs.

2,504,020 immigrants were admitted into Canada out of which 60% were either English-speaking, or of Anglo-Saxon origin, while only 3 per cent were French-speaking and that during this same period Ontario had two and a half times as many immigrants as Quebec. New Canadians now constitute 26 per cent of the country's population compared with 3 per cent a century ago.

Finally, in a province with a French character we are faced with an extraordinary phenomenon: the great majority of immigrants have joined the English-speaking group more than 80 per cent of them having chosen to adopt the English language. In Montreal, an "Anglicized and Anglicizing city", 90 per cent of the 55,000 New Canadian children, those neither of French nor English origin, are attending English schools. New Canadian children constitute 35 per cent of the students of the Anglo-Protestant school commission, 64 per cent of the students of the English-speaking school commission, and barely 3.5 per cent of the 170,000 children in the French-speaking sector. Nowadays, in Montreal, New Canadian children represent 20 per cent of the public school population and 90 per cent of them are attending English-speaking schools.

Where is this leading us? Within ten years Quebec's immigrant population will reach a million and will identify itself mainly with the English-speaking group. We must minimize our collective responsibility in the face of this failure of our ability to assimilate the New Canadians. And we should not turn a blind eye on our economic and cultural poverty, nor on the attraction of the powerful North American complex.

However, if Quebec has a right "to be" as it now thinks and wants to be thought of by its partners in a renewed federal pact, it will be necessary for this thought to be translated into facts by the same simple means used by these partners who are not preoccupied every moment with the question of how to hold on to their identity. This means, among other things, that without doing more or less than the English Canadians themselves are doing with regard to the English language, French must become the sole official language in Quebec and the public school system must be French. It is useless to achieve a special status which would give us control of the numbers of immigrants we could take, if the next generations are lost in advance.

Having established this first point, it is certainly unpardonable for us not to take the measures which are immediately possible and desirable and for which there is a consensus: French classes, professional training, welcoming centres, etc.

Briefly, we must recapture our rights in the fields of education and welfare and also assume the responsibilities which are now constitutionally available to us. In this regard we have the example of Ontario which has for the past one hundred years exercised these rights. But is this not really a false example, since our neighbour is only admirably extending and obeying central government policy in their common interest.

As a matter of fact we can view immigration historically as a policy of population growth. Lord Durham's declarations are coming true both in the facts and in the traditions of the central government: "The whole interior of the British dominions

must ere long be filled with an English population, every year rapidly increasing its numerical superiority over the French... The French Canadians...are and ever must be isolated in the midst of an Anglo-Saxon world". Even in 1967, a French-Canadian cabinet minister can conscientiously knock on France's door but "forget" to consult Quebec beforehand, and, after serious studies on the immigration "potential" in the world, can open two new offices - in Japan and in the Phillipines! Futhermore, the increasing centralization of federal states which was dangerously accelerated by the Second World War, the many applications of the preamble to section 91, and our lack of foresight and realism which prevented us from seeing the interrelationship between social and economic problems (for example, our agreement on the control of unemployment insurance by Ottawa), has resulted in immigration being more and more the instrument for populating the country in the interest of only one of the founding nations, and becoming one of the most important instruments of national economic planning.

Mr. Jacques Brossard in his excellent study, Immigration: the rights and powers of Canada and Quebec, emphasizes that Quebec "has better justification than most of the federated states of the world to control and exercise extended powers concerning immigration...Its interests are evidently different from those of the other provincial states and from those of the central government which are controlled by the English-speaking community".¹

¹ Immigration: the rights and powers of Canada and Quebec, publications de l'Université de Montréal, p. 122-23.

In addition to enumerating the actions that could be taken within the framework of the present constitution, Mr. Brossard points out the constitutional or political reforms that would concern Quebec in a decentralized federation with regard to immigration, and to its special role in the ethnic, cultural and linguistic fields. The most important measure dealing with the control of immigration would be the obligation for immigrants, having a Canadian visa and wishing to live in Quebec, to obtain a visa of approval from Quebec. This would mean a certain autonomy in the recruitment of immigrants, the possibility of a Quebec citizenship, and the power to sign immigration agreements with foreign powers.

But does this go far enough? Is this even possible at a time when it becomes unthinkable to isolate, as in 1867, jurisdiction over immigration when it was conceived of as a means to increase the population - and the farming population at that?

It is obvious that the Constitution does not correspond to twentieth century realities, even in a pan-Canadian framework. The central government (following to a certain extent Ontario's example where the immigration service is integrated into the Department of Economics and Development) has finally carried out the necessary reforms by integrating the former Immigration Division of the Department of Citizenship and Immigration into the new Manpower Department. The process of integration seems to have gone smoothly and if Quebec (where immigration depends directly on an employment policy) does not adopt the same measures, it will be faced by a more dangerous and pernicious

weapon than ever before.

In fact, after recalling that there was a great need for immigrants "in order to maintain a high level of economic growth as well as the cultural progress which accompanies it, these being the essential factors in the maintenance and the development of our national identity by the cultural and economic influence of our southern neighbours", the White Paper on Immigration emphasizes that "in order to retain its positive value, the immigration program must correspond generally to the economic program of the country, and in particular to the national programs concerning manpower and welfare".²

Therefore, what would be the use of controlling immigration if Quebec, after setting out clearly its national identity does not now understand that immigration is a factor of utmost importance and is closely related to a national development policy by means of the full use of human resources? This would necessarily be part of a complete plan and as important as industrialization or the development of our natural resources.

We have in our present population hundreds of thousands of New Quebecers who will not be affected by any future policy of control over immigration. It is not for Quebec to take over the artificial structure that Ottawa has just discarded and make of immigration a cultural epiphenomenon! It is time to eliminate the traditional concepts of immigration with its emotional and folklore content and to turn, if necessary, towards European patterns which are closer to the reality of our situation and

² White Paper on Immigration, October 1966, p. 7

to our ambitions.

Thus, it is no longer in terms of immigration, that is, of control only over the entry into our territory by foreigners that we must devise and demand special status, but rather on the basis of control over the elements necessary for our growth.

As long as we are not sufficiently clear-sighted to see the logic of this argument, and as long as we do not have the courage to apply our all-encompassing solution, we shall remain, according to the harsh but warranted judgement of Mr. Jean-Marc Léger, a people with "great illusions and petty angers".

A Manpower Policy

Pierre-Paul Proulx*

As far as I know, it was not until two years ago that a very limited number of people started enquiring about the need and the nature of a general manpower policy in Quebec. It should not be surprising, therefore, that we do not know the exact position of Quebec on the implementation of a policy still in the developing stage at the federal level. The sharing of manpower responsibilities between the federal government and the provinces is not a question which can be easily answered, and I shall concern myself mainly with Quebec in this paper. Since it is for politicians to answer this question, I shall only mention a few factors that I hope will make the answer somewhat clearer. The respective responsibilities of the federal and the provincial governments in this field as well as in other fields are not fixed permanently; in fact they have changed, are changing, and will still change, influenced as they are by a series of ecological, economic, political, legal and social factors, as well as by modifications occurring in the very objectives and powers of our governments, our unions and our industries.

It is obviously impossible to discuss so many questions in such a brief article. Moreover, I wish to warn the reader

* Mr. Proulx is a professor of economics at the University of Montreal.

that my comments should be taken with a certain reserve, although I shall try to be as objective as possible. As Maxwell Cohen said during the meetings of the Royal Society and the other Learned Societies held in Charlottetown in 1964: "Any allegedly scientific statement about federalism must be viewed with a good deal of reserve, given the present fluid situation in accommodating the new Quebec and the English-speaking response to it. To put it bluntly, we are all advocates generally, one way or another, of our prejudices or values about Canada or Quebec, and under these conditions, scholarship often becomes a means for rationalizing with footnotes, a complex of preferences".

This brief discussion as to what actually constitutes a manpower policy will be followed by a quick summary of the present situation from the point of view of constitutional facts in Canada. I shall also mention a series of factors linked to the decision regarding the jurisdictions of the federal and provincial governments in the field of manpower. (I shall gladly supply anybody, on request, with some information regarding certain aspects of European and American manpower policies.)

Definition

In general terms, one could define a manpower policy as one that concerns the development of human resources and their adaptation to a constantly changing economy. This includes the following objectives: 1) the employment of workers, their re-classification and re-training in various fields of

activity where an actual demand exists; 2) vocational guidance to workers in various occupations; 3) the diffusion of information for increased efficiency in inter-occupational and inter-regional mobility; 4) research work particularly in forecasting manpower demand; 5) the co-ordination and integration of policies of numerous provincial departments and of the federal government whose acts or lack of action may have certain implications with respect to manpower. As we shall see later on, the public sector, the private sector, and the trade unions can each play their respective part in establishing and implementing an effective manpower policy.

The present situation in Canada

The respective efforts of the federal government and the provinces in matters of manpower are dictated by, among other things, Sections 91, 92 and 93 of the British North America Act. As any good student learns early enough, education comes "exclusively" under provincial jurisdiction, as do labour legislation, working hours, salaries, and unemployment insurance which was however, transferred in 1940 to the federal government, etc., and any activities within the framework of a general manpower policy.

The federal government's financial commitments in the field of vocational training and professional improvement of employed or unemployed workers date back to 1920-30. However, not before 1960, when the law providing for professional and technical training assistance was passed, did the federal government's expenditure in this respect become significant.

As anyone knows, this law has just been abrogated by Bill C-278 that concerns adult professional training to which we shall soon refer. We do not intend to give here an historical account as to the part played by the federal government in matters of manpower, but let us simply say that legislation placed it among joint programs. In fact, in 1960, under the act for technical and professional training assistance, the federal government assumed 50% of provincial expenditures in vocational training, and 75% of relocation expenses. These measures were to influence significantly the allocation of funds in various provincial budgets.

The recent act concerning adult vocational guidance (Bill C-278, April 26, 1967) does not provide for the sharing of expenses in vocational training; the federal government assumes 100% of the expenses, except for those relating to research in the field of vocational guidance (Section 10) and for relocation costs (Sections 11 and 21).

A pertinent section of Bill C-278 states that the civil servants of the Department of Manpower and Immigration and its various regional branches are responsible for the registration of adults in vocational training courses. This is not surprising because, except in Quebec, there are no provincial networks of employment offices. Section 6 of Bill C-278 specifies that the Department is authorized to issue a contract for the payment of specified expenses to any employer who offers or undertakes to offer an adult vocational course to persons employed by him.

However, clause 4 of the same section states that the Minister is not to issue such a contract unless he is convinced that the subject of the course has been duly discussed between the employer and the provincial government of the area where the course is or will be offered. In short, in this new and very recent legislation, on which no final judgment can possibly be passed for the time being, the federal government acts as a buyer of services on behalf of the provinces and of industry. This legislation makes no mention of the part that could be played by the unions or intermediary bodies in vocational and technical training programs. It is not surprising, therefore, that the buyer purchases only the services that appeal to him, and if these services are not offered by the province, he tries to get them from industry. Although Bill C-278 provides for the establishment of mixed committees for the evaluation of the provinces' manpower needs, it seems to me, for reasons to which we shall refer later on, that we shall inevitably face conflicting opinions between the federal government and the various provinces as to the best-suited vocational training programs and certain other aspects of a manpower policy.

We know that Quebec has two employment bureaus. The National Employment Service and the Provincial Employment and Manpower Service were established, to the best of my knowledge, around 1930. The National Employment Service accounts for nearly one-third of employees placed, the provincial service for approximately 10%, and private enterprise for the remainder. Quebec has, therefore, no completely organized body through

which the bulk of the jobs offered could be made available to workers seeking employment.

A study of public post-secondary technical courses operated in various provinces shows that Quebec's various programs differ from those offered in other provinces.

(Obviously a fundamental study is necessary to evaluate the extent of such differences.) In vocational and technical secondary schools, as well as in composite schools, Quebec offered in 1963-64 only commercial courses whereas a variety of courses existed in the other provinces.

Ontario, as we can see, puts a great deal of emphasis on the vocational training of the unemployed (Program 5 of the Technical Vocational Assistance Act which has recently been abrogated) and to technical and vocational training in secondary schools (Program 1 of the same Act). On the other hand, Quebec puts more emphasis on trades and other occupations (Program 3) and apprenticeship is considered as vocational training given before working for a living. This explains the existence of apprenticeship courses under Program 3 of the Act.

A more detailed discussion in this respect is not possible here for lack of space, but even a quick study of the problem will show us the differences that exist among the various provinces in the implementation of the federal law. We must admit, however, that the decentralization of a national law (e.g., Bill C-278) is often far from being the regionalization of such a law.

Probable differences of opinion

Let us discuss now the main reasons that I believe will necessarily lead to differences of opinion between the federal government and the provinces (and I shall refer mainly to Quebec) with regard to a manpower policy.

We should remember that an effective manpower policy must consider the co-ordination and integration of policies pertaining to many provincial and federal departments whose acts or lack of action have certain implications concerning manpower. We know that in Quebec the Departments of Labour, Education, Natural Resources, Industry and Commerce, Family and Welfare Services, among others, apply either jointly, with other federal departments in the same field, or independently, certain measures that affect the supply and demand of manpower in Quebec. We are aware of difficulties in achieving horizontal co-ordination of efforts in the various departments at any government level. These difficulties, on which federal and probably Quebec legislation will soon be enacted, are such that I can hardly believe an efficient vertical co-ordination of endeavours between the various departments in terms of manpower is possible.

This, in addition to the fact that a co-ordination of efforts must also exist between unions and employers, leads one to believe that in order to ensure the efficiency of a manpower policy, the latter must not only be decentralized, as is the case with Bill C-278, but also regionalized. It seems obvious to me, however, that a vertical co-ordination is indispensable especially for each English province vis-a-vis the federal

government and hence with the other provinces, because the labour market often goes beyond provincial boundaries, and manpower mobility is such that it would seem useless to establish unco-ordinated manpower policies with regard to the type of courses, their duration, their recognition from province to province, etc. The fact that labour moves from region to region, although to a lesser degree in Quebec, and that immigration policies are federal for the time being, stresses even more the importance of inter provincial co-ordination.

On the other hand, we know that regional differences in unemployment rates have existed for a long time in Canada. This stems from the fact that vocational training differs from region to region and this would stimulate provinces with limited unemployment to adopt eligibility measures in order to encourage women to participate on a larger scale than Bill C-278 sets out, for instance. This difference in regional rates of unemployment implies that the emphasis on employment policies relative to manpower policies would also vary from region to region. It is not enough for the federal government to tell the provinces that it will assume 100% of the manpower expenditures because the provinces should be able to spend part of these funds towards their own employment policies.

Furthermore, these differences in unemployment rates are due to the very nature of various unemployment factors (structural, functional, seasonal, cyclical) which vary from province to province. Since appropriate policies designed to check unemployment must partly take into consideration the type

of unemployment in question, it remains obvious that measures applied by various provinces in matters of manpower must also be different.

I am inclined to believe, in view of the complexity of today's labour market, that a federal manpower policy, even though decentralized, will not be as effective as a regionalized policy.

We also know that the provinces have reached various stages in economic development and that their industrial potentials vary in importance. It is for these reasons, among other political, sociological and economic reasons, that the respective parts played by the public and private sectors vary from province to province. Consequently, the provinces may wish to train workers in different fields. Although we should not exclude the possibility that selection methods, applied by regional offices of the federal Department of Manpower and Immigration, could be designed to attract appropriate candidates for courses offered by the provinces, it seems significant to me that Bill C-278 allows the federal government to sign agreements with industry for the training of workers and, in this case, the provinces' role will only be one of consultation.

Thus, since general education levels vary from region to region, and since, in reality, the federal government will not allow vocational training expenses to be disproportionately different from region to region, it follows that the provinces will have to make different endeavours in the field of general education in order to achieve different levels of vocational

and technical training because both are interdependent.

We are unable here to develop and complete these comments by discussing Quebec's planning endeavours for example, and in order to end this discussion let us briefly mention certain problems of a more specific nature which will probably lead to different points of view on the part of our various levels of government. It seems to me that some more industrialized provinces may wish to see some progress made in respect to allowances paid to workers, i.e., higher allowances for those attending technical and vocational training courses than for those attending trade courses. Certain provinces find it more difficult to induce their workers to complete the training course and wish they could improve somewhat the allowance as the course gradually comes to an end, or even grant a certain bonus to those who complete the course and find employment in the chosen field for which they have been trained.

Conclusion

In matters of manpower policies, as in many other fields, the federal government's responsibilities on the one hand, and the provinces' on the other, will, no doubt, affect and influence tax-sharing measures. Their relative obligations in the field of manpower will be reflected in all their activities, as is the case in Eastern European countries. It seems obvious that neither the federal government nor the provincial governments can afford to remain indifferent about manpower policies. It is extremely important to establish measures of collaboration and co-ordination between them with a view to

making a more effective use of such a policy.

Future distribution of responsibilities must take into consideration the economic levels revealed by research and the forecasting of manpower requirements set out by the provinces and the federal government. Mechanisms must be set up in order to enable effective inter-provincial employment opportunities.

The sharing of responsibilities must also take into account that the great majority of the provinces, and this includes Quebec, have but a very limited number of persons who could efficiently direct certain requirements of a manpower policy (e.g., research). Any transfer of responsibilities between various levels of government must, therefore, take this fact into account.

I apologize to the reader who might have thought that this discussion would contain details concerning the distribution of functions among various levels of government with regard to manpower policy. I also apologize for my limited comments regarding constitutional difficulties that will also affect the distribution of jurisdictions among governments, and I leave this aspect of the problem to our constitutional experts. I hope, however, that a quick survey of the situation in Canada, Eastern Europe and the United States, as well as a look at the various areas on which manpower policies might differ, will enable the responsible people to find a more precise formula for the measures that should be applied towards an effective manpower policy in Quebec.

Agriculture - is it a Federal or a Provincial responsibility?

Maurice Carel*

Section 95 of the British North America Act states:

"In each province the Legislature may make laws in relation to Agriculture in the province and to Immigration into the province; and it is hereby declared that the Parliament of Canada may from time to time make laws in relation to Agriculture in all or any of the provinces and to Immigration into all or any of the provinces; and any law of the Legislature of a province relative to Agriculture or to Immigration shall have effect in and for the province as long and as far only as it is not repugnant to any Act of the Parliament of Canada."

This section, that is the only one to refer explicitly to agriculture, grants concurrent jurisdiction in agricultural policy to the federal and provincial parliaments with, however, the Parliament of Canada having paramountcy.

But is this as clear as it seems to be at first glance? What is meant by "laws in relation to Agriculture"? (Today, what would "laws in relation to industry" mean in a similar context?) And what meaning should we give to "from time to time make laws"?

Besides, couldn't the administrative offices - which are not always the direct outgrowth of legislation, - promote and

* Mr. Carel is professor of farm management economics and head of the department of agricultural economics, Faculty of Agriculture, Laval University.

guide agriculture as much if not more than legislative texts, depending on the dynamism and skillfulness of their personnel.

New conditions in agriculture in 1967

First, what does agriculture represent today? It certainly does not mean simply ploughing the land and supporting in relative self-sufficiency one's family on a lot. Ploughs are rarely pulled by horses as they commonly were in 1867. Modern agriculture cultivates, conserves, develops and "artificializes" natural resources in order to supply products, mostly foodstuffs, services and even recreation, to a non-agricultural population which is nearly ten times the number of people living on farms.

The remuneration of men in agriculture, this economically vital field, is approximately only 50 per cent of the remuneration of workers engaged in other fields. In this respect, agriculture could generally be qualified as a relatively poor sector. This unfavourable situation is greatly responsible for changes occurring in the traditional attitudes of people engaged in agriculture who today wish to benefit from the same economic, social and cultural advantages as other workers of the nation.

Agriculture must solve two essential problems. The first pertains to the rapid industrialization of production and marketing methods; among other things this requires the expansion of farm units as well as administrative skills. The second is interdependent with the first problem and concerns the rationalizing of the exodus of people from agriculture.

Three measures for implementing an agricultural policy

The two problems mentioned above cannot be solved through private initiative alone. Planning is required. We can think of three types of policies in this respect: one concerns the development of agricultural areas, another relates to markets, and the third involves intellectual resources. These policies must be consistent with the nation's economic, social and cultural policies.

By "development of agricultural areas", we mean, for example, the rational economic use of resources within each farm unit and, consequently, production planning of each unit, regional production planning, and the modification of the traditional organization of single-family farming that is increasingly becoming obsolete. We should also mention the general redevelopment of agricultural areas, a task that cannot be carried out without the demarcation of territories to be used for various purposes (food production, recreation, forests, etc.) or without a farm credit policy, a most important means for changing the organization of farming and land redistribution.

With regard to markets, let us mention in particular the question of reducing fluctuations in prices and quantities supplied. In agriculture, biological resources and products make the recourse to crop insurance and stock piling absolutely essential since they tend to reduce short-term fluctuations. There is also the question of information about future prices. This necessarily

involves the forecasting of farmers' decisions (in order to stabilize intermediate-term supply) and the setting of quotas on certain products, taking into account the efficacy of efforts to increase exports.

At this point, one wonders whether it would not be preferable to let the price mechanism play more of its role in regulation, and allow compensatory payments to be made to certain efficient kinds of cultivation. This question, raised on many occasions, is related to balancing the industrialization of agriculture with the proper exodus of people from the farms. This would enable the consumer to obtain farm products at a lower price without penalizing the farmer who is modernizing his operation.

The development of intellectual resources includes the training of future professionals who will become involved in agriculture, qualified people guiding the technical and socio-economic research (mainly measures aimed at promoting progress in the agricultural world) in this sector, the continuing education of adults engaged in production and marketing, and, particularly, the improvement of those who manage agricultural enterprises and their advisors (who should adapt themselves even more to socio-economic requirements). This includes special training for those who must, will or would eventually leave the field of agriculture, and also the judicious allocation and efficient utilization of collective intellectual capital for professional or cultural purposes.

Constitutional imbroglio

But where lies the constitutional authority for such policies? Here is a question which we could discuss for a long time if we believe that the complexity of modern agriculture must be implicitly contained in our constitutional texts.

Policies concerning the development of agricultural areas cannot, for example, ignore "property and civil rights" that, according to Section 92(12) of the B.N.A. Act, are under the exclusive jurisdiction of provincial legislatures. Land development, which we shall refer to again, also includes other important aspects.

On the other hand, it would seem that market intervention is a federal prerogative according to Section 91 of the B.N.A. Act which sets out: "The exclusive Legislative authority of the Parliament of Canada" in matters concerning the "regulation of trade and commerce". But many decisions which were made by the Judicial Committee of the Privy Council do not allow such a simple interpretation. We should recall, for example, that the federal law concerning the marketing of natural products was judged unconstitutional in 1937 (A.C. 377). The interpretation that seems to be generally accepted is the following: an agricultural product remains under provincial jurisdiction as long as it is not taken out of its province of origin; it comes under federal jurisdiction when it leaves a province's boundaries or when it crosses the Canadian borders. But within another province's territory, the same product is

subjected to that province's regulations! How, then, could we undertake the planning of markets for agricultural products without having recourse to various expedients which, if carefully considered, would lead to a situation whereby the Acts of one legislature or the other could be judged as being unconstitutional?

Again, the assessment of customs duties and railway transportation tariffs is a federal prerogative. But do we always realize how much this prerogative can indirectly but effectively influence (or disturb as the case may be) a province's agricultural evolution and, particularly in the long run, the location of agricultural production in Canada?

Policies in matters of intellectual resources should be under the province's exclusive jurisdiction, in accordance with Section 93 of the B.N.A. Act which states that: "in and for each province the legislature may exclusively make laws in relation to education". But the concept of the term education like that of agriculture has considerably broadened. And it seems rather difficult to dissociate vocational training from adult education, adult education from applied research, and these latter activities from agronomical studies. It is, therefore, on the same government level that the full coordination of all such activities must be placed, the provincial level of course; this is particularly important for Quebec and does not exclude the possibility of effective collaboration with any other government.

Two major tasks: the training of qualified men and the creation of suitable "administrative units"

On further thought, we should not exaggerate the importance of legislative jurisdictions. Actions taken by civil servants of either one or the other government levels may well exert a predominant influence on agricultural trends, since agriculture is probably the "largest field where services are provided concurrently".

At the same time, we must be aware that, if the exploitation of our resources requires marketing of the products, it also requires, first, a readiness to intervene in the development aspects of such resources. It also calls for connecting technological means to the competitive forces of the market. The development of biophysical and human resources is therefore in many respects a cultural problem - and that is of the utmost importance. Unfortunately, French-speaking personnel who have received adequate and sufficient training in such a complex field are extremely rare. We should not be surprised, for example, by the fact that, in Quebec, rural economics taught in the French language only began to be developed in 1962 and that now there are more than two rural economists (in Laval University) working together in teaching and research.

We should also bear in mind always that the greatest potential in terms of agricultural development (particularly with regard to the dimensions of existing agricultural units lending themselves favourably to modern mechanization as well

as to the availability of arable land) is to be found in Western Canada and not on the shores of the St. Lawrence.

If the preceding three remarks are well-founded, and if we wish to see in Quebec our agricultural, biophysical and human resources administered by French Canadians, and not almost uniquely by Anglo-Saxons, we must also be ready to accept the consequences. We should wisely foresee and establish "administrative units" adapted to socio-economic realities and be able to plan and use efficiently our agricultural resources. We can easily see that the training of skilled people appears to be much more important than the endless discussions over what is or is not provided by the "pseudo-constitution". This country will have to wait a long time until another will name it a "Federation of Republics"!

The two Farm Credit Boards should be replaced
by a Provincial Lands Administration

Let us be serious and indeed specific in proposing for Quebec some of these "administrative units".

We have a provincial Farm Credit Board and a federal Farm Credit Corporation operating side by side and pursuing, at least in principle, the same objectives. Is it not about time that we should have one and only one structure vested with wider responsibilities, a true "Agricultural Lands Administration", having the authority to buy, sell or rent arable land with a view to establishing farm units adapted to our actual needs, and lend of course the necessary funds to farmers who are, after all, real entrepreneurs? This is the provincial body

that alone should administer the important funds available through ARDA agreements. We should start by consolidating the services before thinking of farm consolidation and also transfer to some department other than Agriculture (and Colonization) the responsibility to help people who, although living on farms, are not farmers anymore and never have been. It is also a provincial responsibility to transfer the numerous and varied subsidies granted by this Department. But this transfer will require tremendous political courage.

Quebec's Agricultural Marketing Board
should be given a wider field of activity

Quebec already has an Agricultural Marketing Board (Régie des Marchés Agricoles du Québec) and its general functions are indeed very wide: a) it assists in the coordination of various marketing operations of farm products, b) it helps find new market outlets, c) it assists farm production planning, etc. (11-12 Eliz.II, c.34, art.9). But this Board does not seem capable, for example, of somehow regulating the influx of surplus stocks (mainly vegetables) produced in the U.S.A. into Quebec markets. These surpluses occur particularly in the Montreal region in peak production periods.

On the other hand, if a consistent agricultural policy is eventually defined someday for Quebec, such a provincial body will have to bear the responsibility of supporting the prices of farm commodities produced in Quebec, or better, as I have mentioned before, grant compensation payments to certain groups of

producers. The standards to be required from farm units which will benefit from such grants must be compatible with the standards set up by the "Provincial Lands Administration" with a view to establishing potentially viable enterprises in each region.

Research should be concentrated in Quebec

With regard to the last of our three comments, the best farmers will undoubtedly point out that their enterprise is not big enough to finance alone the cost of technical research or economic studies which can be afforded by a larger industry. While this is true, a great deal of money, nevertheless, is already being spent by both levels of government on agronomic research and popularizing agriculture. But in Quebec there is no connection whatsoever between the two. Very few of the results achieved by federal experimental farms are transmitted to farmers. Furthermore, studies undertaken in these applied research centres do not always correspond to immediate needs, apart from the fact that the management in federal centres in Quebec may decide to suspend research on the technical and economic possibilities of a product just when it has begun, and we prefer not to mention too concrete an example of this. There seems to be only one general answer: the establishment of a "Quebec Institute of Agricultural Research" that would include an administrative branch for the direct management of research centres of Quebec's Department of Agriculture as well as for the experimental farms which would become provincial. By

extending this coordination, another branch of the same institute could be given responsibility for scientific agricultural information that is far from being satisfactory, despite what some specialists say. This is why it seems absolutely necessary to associate some selected farmers with the development of such an institute. This is another provincial responsibility of "formally" popularizing agriculture via a network of experimental farms.

Possibilities for other fields of activity

In the same vein, we can imagine other provincial initiatives. A good step forward could be accomplished, for example, by promoting the establishment of agricultural advisors specially assigned to a group of farmers. These farmers would enjoy a certain autonomy enabling them to make use of their advisors' services and they would assume in return part of the consultation fees.

Under this heading we should include, as a corollary: the urgent necessity to provide Quebec with a service which will be specially responsible for "prospective manpower needs". Such a service should pursue advanced studies in the field of labour markets, foresee technological developments (in collaboration with other bodies if necessary) and recommend continuing adequate educational programs for various categories of workers (before their absence is severely felt). It is obvious that such a service could play an important part in rationalizing the exodus mentioned previously.

In view of this, it is hardly desirable - others would even say that it was unconstitutional - that civil servants of the federal manpower services should - as provided by sections 4 and 5 of the recent Bill C-238 - take the necessary measures for the registration of adults in vocational training courses. We might as well say that Quebec should relinquish the reallocation of its essential natural resources.

The repatriation of revenue is as urgent, if not more so, as that of constitutional texts

Everything that has been previously said stems from a very brief personal analysis of federal and provincial responsibilities in agriculture. One thing is certain, and that is the unparalleled confusion existing in "constitutional jurisdictions" between the two levels of government. But there is also the possibility for a province to assume more responsibilities in planning its own agriculture, and for Quebec this constitutes almost a necessity, unless, instead of presiding over its own biophysical and human resources in accordance with its specific culture, it decides that it is easier to let others do the planning.

To conclude, we should consider that in agriculture, as in many other fields, the reorganization of administrative services between the federal and the provincial governments requires a new distribution of fiscal revenues. The need for Quebec to repatriate such resources is perhaps more pressing than the repatriation of a so-called constitution.

But, and this is indeed very important, Quebec must, in order to avoid wasting new fiscal resources, continue to draw up a serious plan with a view to securing a greater number of dynamic and highly qualified civil servants. Without that, and this indeed applies to agriculture, the desired responsibilities cannot be rapidly and effectively assumed.

Financial Institutions

Jean-Guy Cardinal *

If an outsider wishing to know the division of powers between the Canadian government and the province of Quebec were simply to study the list of financial acts passed by each of these governments, he would certainly be surprised to learn that both have, in fact, legislated in the same areas. Taking a quick look at the amended statutes of Quebec in 1964, we find, in particular, the following acts on: companies, inquiries into companies, real estate, the special powers of corporations, the liquidation of companies, trust companies, loan and investment companies, credit and savings, insurance, etc. On the other hand, a quick look at federal statutes shows us that Ottawa has passed these acts on: companies, bankruptcy, trust companies, small loans, banking, savings banks, investments by insurance companies. To these already lengthy lists, let us add a deposit insurance act which both Ottawa and Quebec have recently proposed.

Through closer analysis of both lists, we see that each legislature saw fit to pass its own statutes covering companies, trust companies, insurance companies, savings banks, loans and deposit insurance.

Quebec citizens, therefore, have the option of founding a commercial, financial or industrial company either through

* Mr. Cardinal was Dean of the Faculty of Law at the University of Montreal and has recently been named Minister of Education in Quebec.

a federal or a provincial statute. Since each government wishes to control the companies and corporations coming under its jurisdiction, the result is a state of administrative confusion similar to the one existing in the legislative order. The contest over jurisdiction thus provides an excellent battleground for political power plays, and enables the federal government to exercise a standardizing influence throughout Canada in the fields of commerce and finance.

The federal act on deposit insurance is the most recent and revealing example. Since all these companies have an important role to play in the financing of municipalities, school commissions and church councils, these last being peculiar to Quebec, a new difficulty arises. If we forget the workings of the Constitution, which do not come within the framework of these statutes, we can examine pragmatically what is really happening in an attempt to find out why Quebec wishes to have special jurisdiction in these areas.

The example of trust companies

Trust companies supply us with a typical example. These companies can be created either through a federal or through a provincial (Quebec) act. There are now about seventy trust companies operating in Canada, seven of which come under federal law. However, trust companies, due to the very nature of their work, are dependent upon civil law. These companies can act as executors, guardians, or administrators. They are actively involved in mortgage loans and play an important role

in the floating of bonds, especially through the statute on the special powers of corporations. Thus, there was already a latent constitutional problem that was recently brought to a head by the federal government following the Porter Commission report on the adoption of the Bank Act and its plan to insure deposits.

Technically speaking, in the eyes of a Quebec jurist, there is absolutely no doubt that only the province should be able to endow companies with the extraordinary powers which trust companies possess. The Federal government, viewing this problem from another angle, has raised a discussion that is far from being over starting with the receiving of deposits and the method of financing through commercial or mortgage loans. While the province looks upon trust companies as acting primarily in matters of ownership, and of the execution and settlement of wills, the federal government looks upon them as near-banks, and is using these laws in the banking field in order to exercise its powers over the trust companies.

Following the Porter report, the Quebec government established a study committee to review, from a constitutional viewpoint, which financial institutions should be under its control. The government obviously does not want to be beaten on its home territory. The federal government, in fact, is ready to look on trust companies and caisses populaires as banks, and even to grant them additional powers in order to be able to control them in the future.

Caisses populaires

Another example of federal intrusion can be seen in the caisses populaires where the central government, through use of the Corporation Income Tax Act and the Banking Act, would impose its own control. As we know, the caisses populaires in Quebec bear little resemblance to the credit unions of other provinces. Their way of administering the funds they receive, the philosophy of their members, and their methods of administration make them peculiar to the province of Quebec. It is amazing that the present Constitution grants the federal government exclusive jurisdiction over savings banks. There are only two of these and they are both in the province of Quebec.

Trust companies, caisses populaires, savings banks and insurance companies are certainly instrumental in shaping Quebec's economy, and this is why the province is well aware that it cannot give up its authority in this field. On the one hand, insurance companies have at their disposal huge sums of money which are mainly invested in bonds and mortgages; on the other hand, the contracts they sign with their customers are intimately tied to the civil code, especially with regard to succession claims. Both these aspects are important for a province where public institutions and the way of life are different from those of the other nine provinces.

Quebec must have full authority over
certain institutions peculiar to this province

However, as Mr. Marcel Faribault has often remarked, no one questions the fact that the Federal government tends to

act as a lawmaker in these particular fields since, during the last war, the inheritance tax and income tax were levied by the Federal government. The state and its citizens have gradually come to think of trust companies as the best equipped to handle funds and settle succession claims. It is obviously in the Federal government's interest to have these companies under its wing. To this is added the fact that not only is Quebec law different, but also its legal profession is divided into two categories, lawyers and notaries. The standardization desired by the federal government can only aggravate the problems already in existence in all those areas where the role of the notary is fading in importance, and where the problems of succession claims, household economy, and the customs of people are ignored. It will be sufficient here to draw attention to these questions that are far from simple and that, once again, cannot be solved without bearing in mind that everything is different in Quebec. We have to recognize that the status of trust companies, savings banks, credit unions, insurance companies, and the members of legal societies are different in Quebec from those throughout the rest of Canada. It is therefore easy to understand that from the special status of individuals and institutions, the transition to special status within Confederation for a province is an easy step.

This is why we believe, together with Messrs. Faribault and Fowler as they explain it in Ten to One, that the jurisdiction on savings banks mentioned in the British North America Act should be transferred to the provinces, meaning, in effect, to

Quebec. Similarly, a new constitution should provide for the transfer to the provinces of jurisdiction over foundations and trust companies, insurance companies, co-operatives, caisses populaires, and all other similar institutions.

The case of commercial companies

As far as the right to incorporate companies is concerned, we shall refer to a paragraph of the book we have just mentioned.

We propose that the power to incorporate companies and to create such artificial persons should be clearly defined in the new constitution and should be distributed in a definite way between the federal and provincial governments. Generally the jurisdiction over persons in a federal state rests with the regional governments and should extend to artificial persons such as ordinary trading corporations. However, companies dealing with business under federal jurisdiction should be incorporated and controlled by Parliament. Thus, in Article 68 (8) we provide that the provinces shall have power to incorporate companies except those mentioned specifically in Article 67 as being of federal jurisdiction. However incorporated, the newly created legal person acquires the fundamental right set out in Article 14 to the free exercise of property rights across Canada, as if it were a natural person. It is also protected under Article 58 (f) against impositions or restrictions by any province more onerous than the province imposes on companies it itself creates.

All the aforementioned difficulties are generally found in commercial law. How can Quebec legislation freely and logically alter the Civil Code, when the Federal government, through the laws on interest, small loans, loan companies, and bankruptcy, is constantly meddling in areas that are administered under civil law? Furthermore, federal legislation does not take into account

the peculiarities of the province of Quebec. It is based on the assumption that the common law is applicable to all Canadian citizens. We agree that a uniform pattern should exist in commercial law, but this pattern is already ensured by the law on bills of exchange which is a federal law.

Clarity and certainty are the prime requisites of any law if the citizens are to know and respect it. As past experience has shown, the coexistence of federal and provincial laws can only lead to confusion and chaos. This is one more reason why Quebec should expand its jurisdiction or exercise it to the maximum degree in order to reduce federal interference.

Quebec must take the initiative

These are only a few aspects, among many, of life in a province where the language, the way of thinking and acting, the common law and the special nature of its institutions must, through the actions of its citizens, harmonize with the standardization desired by the Federal government. The word "desired" is perhaps a trifle strong since in many cases, rather than being a conscious desire for standardization, it is simply a total ignorance of the special characteristics of one group of citizens within the country.

There may be a complete solution to all these problems but in political life problems are more practical than theoretical, and are usually looked upon, for the most part, as special cases. Hence, expressions of good intention will not suffice to remedy the present situation. The provincial government will have to make fuller use of the powers allotted to it, and conse-

quently to create for and by itself a special status. It is good to note that Quebec has passed a law on income tax, and proposed a law on deposit insurance. In the past, our province has lacked imagination by not making fuller use of its powers, or by copying federal laws. In the latter case, rather than expanding on these laws, the provincial government was often more restrictive. Had this not been the case, the province would have been able to pass a number of laws on finance enabling it to control the companies and firms now operating within its borders. It is interesting to note that Ontario has set the example in this field. If we regret the fact that federal law is now upsetting the order of Quebec's legislation, we must nonetheless realize that several of the provincial laws that we have mentioned were copied on federal or imperial statutes with the result that disorder had already crept into the economy through our own doing. We had ourselves paved the way for the uniformity desired by the Federal government.

The same uneasiness can be found on the administrative level. If Quebec had known how to organize groups that might have efficiently controlled the floating of bonds, the investments of financial companies, the deposit of savings, the investments of insurance companies, etc., the federal government would not have been able to claim that it was necessary to exercise control over these matters from Ottawa in order to ensure the protection of lenders, of depositors and of the insured.

Several of the provincial laws that we have mentioned should therefore be radically amended, and ad hoc organizations

should be created to ensure their efficient application.

The Problem of Scientific Research

Philippe Garigue*

The main features of scientific research in Canada result from its history and geography as well as from the presence of the United States. Constantly stimulated by the latter's dynamism, Canada also feels its consequences. For instance, after having borne the expense of training young scientists, Canada loses a large percentage of them each year to its neighbour. Between 1956 and 1963, 8,515 Canadian scientists and engineers took up permanent residence in the U.S., nearly 25% of all the immigrants to the U.S. in these categories. Consequently, even though Canada absorbs a large number of researchers and engineers from other countries, it suffers a considerable net loss of its human resources.

There is no doubt that this massive loss of scientists is the result of the different levels of research development in the two countries. It is also important to note that Canada's political organization is not very suitable for the development of research. For instance, the federal structure gives Ottawa certain powers and initiatives that allowed Ottawa to create the National Research Council, and other federal organizations in areas as varied as atomic energy and military

* Mr. Garigue is Dean of the Faculty of Social Sciences at the University of Montreal.

defence. But the federal structure also limits the organization of research and the taking of initiatives. The operation of federal organizations is based on administrative guesswork rather than on an overall plan which integrates researchers' training with research priorities linked to long-term investments for the whole of Canada.

This limitation is also found in provincial research bodies. Seven of the provincial governments have invested in research according to their own preoccupations and priorities. These groups operate on very different bases of organization and financing; but there again the procedure is determined largely by problems of a practical nature raised by the needs of each province. Three provinces, moreover, do not have research groups supported financially by the government. Quebec has just announced its intention to create such a group for its own needs.

But it is not only the political federal-provincial structure which accounts for the lag of scientific research in Canada. The structure of Canadian economic activities is just as much responsible. Canadian industries are very largely dependent on foreign investment, and often are branches of companies based in other countries. Consequently, their investment in Canada is of a very limited nature, preferring to utilize the inventions and discoveries made available through international agreements.

Canadian research work done predominantly in English

This same lack of long-term scientific policy can also be found at the level of university research. Far from

establishing an equitable share of resources, the present system accentuates the imbalance. Looking at the sums granted during the last ten years by federal organizations to university research, it is evident that they have largely gone to six English-language universities (Alberta, British Columbia, McGill, McMaster, Saskatchewan, Toronto). Of the \$17 million distributed to universities in 1965-66, the two largest French-language universities in Quebec (Laval and Montreal) received about \$1.5 million. The existence of such a difference is so obvious that Professor Maurice l'Abbé could sadly foresee, at the 1966 meeting of the ACFAS, that the new policy of the National Research Council would reduce post-doctoral scholarships for French universities from 4% to practically 0% of the total distributed.

It is evident that the organization of scientific research in Canada is not at the present capable of providing the necessary equality for the two Canadian founding groups. To point to the difference in the granting of monies is to blame no one. For various reasons, the scientific community which grew in Canada is largely an English-speaking community, as shown by the respective proportion of the two ethnic groups in Canadian scientific societies. Thus, section III (Science) of the Royal Society is composed of 374 active members, only about twenty of whom are French-speaking.

However, this does not mean that the Quebec government displayed a greater comprehension as to the consequences of the weakness of scientific research among French Canadians; to the contrary, an almost pathological indifference towards science

has marked, in the past, the actions of French-Canadian political élites. Thus, in 1965, Ottawa spent \$334 million on research, and Quebec, according to a generous evaluation, a little more than \$1.5 million.

It would be easy here to recall the economic weakness of the French Canadians, the small number of people engaged in full-time scientific activities, to underline the fact that the first French-language research centres are just coming to life (Hydro-Quebec, medicine, etc.). However, it is legitimate to wonder about the possibility of the Quebec government establishing a profitable scientific research policy as a means of development. For in these times of massive investments in science by governments, is it possible to do better in Quebec than in Ottawa?

Can science become a national resource for French Canadians?

If we take for granted that the future of a nation is determined today by the existence of a national scientific community, and that this community is normally made up of three elements: university research directed principally towards fundamental problems; industrial research directed towards the practical application of discoveries and inventions; and research by government organizations directed towards areas relevant to the activities of the various departments, it becomes evident that Quebec is far from possessing the elements necessary to launch a scientific policy. On the other hand, if Quebec is to rely on federal groups for its scientific development, it is just as evident that Canada's current scientific organization

is incapable of filling Quebec's needs. And in all probability such an organization would not succeed in reducing the gap between Quebec's industrial and social development and that of the rest of Canada.

The purpose here is not to suggest that the Quebec government should immediately launch a policy of massive investments in science. The lack of qualified researchers, and the necessity of planning a long-term economic policy would make such a move impossible. It is, however, necessary to realize that a balanced scientific program in the long-run, necessitates large-scale investment.

The problem is, in fact, to coordinate the various priorities of development, each at its own particular level of activity. We must not believe that the creation of a few specialized research bodies, associated with the interests of certain industries, could transform the present situation. A scientific policy is very difficult to organize, as it depends on different activities, the principal ones being as follows:

1. The teaching of sciences and the training of researchers

A scientific policy must be based on the principle that the coordination of the training of researchers, from elementary school to university level, be a function of the Department of Education. The training of researchers and technicians must be planned in such a way that it receives a high degree of priority. This will create the necessary personnel for all categories of research and will fit the various needs of Quebec. These programs will differ from the

present system by the emphasis placed on the creation and training of researchers.

2. Research in universities

The problem is how to allow two complementary activities to exist concurrently; how to contribute to the development of scientific knowledge; and how to give the necessary training to researchers who will become the scientific innovators in industry and government services. These two activities are better realized when the universities undertake basic research, that is, the development of knowledge. The teaching-researchers who today form the majority of university staffs in Quebec need, to succeed in this dual task, long-term investments in rather costly equipment the financing of which cannot be carried by the normal operating expenses of the university. In that category must be included research centres in medicine, nuclear physics, installations for radio-astronomy, and even research requiring the use of oceanographic vessels or specially equipped airplanes.

3. Research relevant to public services

Today, road construction, control of pollution in the atmosphere or in rivers, standardization of hydraulic resources, agriculture, fisheries, wildlife, etc. are areas of research under the control of the various Departments. Because of the imperative need to implement a precise policy, this research and its application can only be supported by the government. However, an important part of this research could be entrusted by contract to industrial firms or to institutions especially created for that purpose (such as the new Hydro-Quebec centre for electrical

research). In a province like Quebec, whose principal natural resources are mining, forestry, the manufacture of building materials and of certain chemicals, this method of developing research would allow a reasonable enlargement of the Quebec government's scientific activities, and would avoid an overly "applied" approach which is often detrimental to scientific innovation.

4. Industrial Research

Since French-Canadian companies are generally too small to carry on their own research, it becomes necessary to establish specialized groups making their services available to small and medium-size firms. The government should encourage this approach to research by means of fiscal exemptions, and by other fiscal stimulants. It should also encourage various firms in the same industry to create collective research centres and assist in their financing. Such centres would also ensure for Quebec's industries the distribution of technical and scientific information, and even the practical know-how to member firms.

Possibility of a Quebec policy

The Department of Education recently announced that Quebec's present research efforts represented 0.7% of the gross national product, that is (today) a sum of \$13.00 per inhabitant. If the figure 2% of the gross national product represents a normal level of expense, then the sum should be \$38.00 per inhabitant.

This sum could be realized in two different ways: an increase in the Federal government's grants for research centred in Quebec, and an increase in the research investment of the Quebec government. Evidently, it is principally from one or the other governments that long-term solutions can be expected. However, given the present imbalance in granting subsidies to the two ethnic groups, this is not possible without redefining government responsibilities between Quebec and Ottawa in matters of scientific research.

The constitutional problem

If Quebec wants to make up its lag in economic and social development, it must develop to a maximum its scientific resources. But this "optimum" utilization cannot take place within the present frame of scientific research in Canada, nor by allowing the attitude of indifference of French-Canadian élites towards science to continue.

There are two possible solutions. First, the reform of the present structure of Canadian federalism thereby allowing French Canadians to participate equally in the scientific resources of Canada; and this participation would be according to a new dynamic conception of the organization of Canadian scientific research. Second, Quebec can gradually create its own policy through working closely with the French-language scientific community. This policy would be financed in part by repatriating federal funds destined to research, or by new Quebec taxes.

It is beyond the scope of this article to analyse these

options in detail. It will be sufficient to underline the fact that science is both national and international, and that its ideas influence human institutions. To refuse to be locked within obsolete categories is the first step toward creative innovation. It is obvious that Canadian scientific organization is not adequate for the needs of either Canada or of Quebec. It is necessary to innovate, but it must be done quickly, for, at a time when the government of Ontario is bringing into effect its Sheridan Park project of a "scientific community" capable of effecting a major transformation of science in that province, the gap between Quebec and Ontario widens that much more.

Forty-Eight Years of Licensing
Or
The Constitutional Foundations of Broadcasting

Bernard Benoist*

As of 1967 the constitutional basis of the Canadian broadcasting system is the story of forty-eight years of licensing. Forty-eight years have already passed since that day in the winter of 1919 when the Federal Minister of the Navy granted to the Canadian Marconi Company the first license to operate a broadcasting station in Montreal. Although the XWA signal has been supplanted by CFCF, the voice of Canada's first station can still be heard in Montreal; on that score, a number of Canadians can pride themselves on being classed among the pioneers and forefathers of broadcasting in the world. In addition, the remarkable achievements of several generations of artists and technicians all explain why one hundred years after Charlotte-town, the broadcasting system holds more promise than the railway system, that downpayment on Confederation.

Forty-eight years of constitutional ambiguity is typical of our federal system. The silence of the B.N.A. Act and of its amendments, the omnipresence of the federal government, the almost total lack of interest on the part of the provinces, the improper interpretation of court decisions, the oblivion to which important documents are consigned, the absence of the

* Mr. Benoist is a professor in the Faculty of Law, University of Ottawa.

most elementary legal guidelines - all seem to conspire in broadcasting matters to the maintenance of a state of affairs that would normally be the prerogative of a unitary state. It becomes almost redundant to dwell on the effects of certain obvious instances of intellectual dishonesty.

Fundamental ambiguity is the situation, since only a handful of experts, at most, are aware of the essential distinction between radio on the one hand, and broadcasting on the other. Yet this distinction rests on a scientific and sociological basis that can be clearly dissociated from any controversy of a constitutional, legal or political nature. Moreover, this distinction is universally used by the specialists in related disciplines.

Briefly, radio is an instrument of communication while broadcasting is a means of information, education, and entertainment. Radio is the use of sound waves for the purposes of police, taxis, emergency services, sea and air navigation as well as for those of broadcasting. Broadcasting, on the other hand, is the production of sound and of picture (for, in the proper sense of the word, broadcasting includes what in familiar terms we call television) for public consumption - using the radio as a means of transmission.

Doubtless, broadcasting remains dependent upon radio; however, they are nonetheless not necessarily tied together. That a studio production should be at the mercy of transmission conditions does not affect the content of the message any more

than the distribution of ink on newsprint affects the thoughts of the editorial writer. The fact that the dissemination of a broadcast by means of sound waves is different from what it might be by wire or cable no more affects the intrinsic value of its content than the make-up of a major newspaper depends on its newsstand sales as against home deliveries. The fact that a television set must be connected to an antenna rather than be plugged into a hot water tap hardly changes the attitude of the Quebec public towards "Sel de la semaine" and "Cré Basile".

One does not need to be a great scholar to understand that a master papermaker or printer is not necessarily a competent newspaper director. By the same token, in a federal country the authority entitled to manage the pulp and paper industry or the publishing industry is not necessarily the expert in matters of the written press. Yet, in Canada, things are quite different in radio and broadcasting matters.

It is undeniable that the respective constitutional fate of these two realities, intimately tied but essentially distinct, was sealed without the slightest distinction being established. It was sealed, from 1925 to 1935, between the federal state as the great advocator of national services and the true expert in "hertzian" communications and the provinces into which Quebec had injected a still rather limited and pragmatic desire for autonomy. These provinces, however, still lacked the appropriate knowledge and genuine interest in carrying on the struggle. From that time on, the dice were loaded and the inequality of positions foreshadowed the outcome of the debate.

In spite of this inequality, we must recognize without reservation the good sense of the court decision in the 'radio case' appeal to the Judicial Committee of the Privy Council in London in 1932. Because Quebec had no constitutionally-recognized special status, and because of sub-section 10 of section 92 of the British North America Act of 1867, the highest court of the time could not reach any other conclusion: "The Parliament of Canada has exclusive legislative power to regulate and control radio communication in Canada".

However, it is inadmissible that without further ado this decision (in matters of radio) settled for all practical purposes the constitutional fate of broadcasting in Canada.¹

It is impossible to plead ignorance for the federal government of that time as to the distinction between radio and broadcasting. If it declined to invoke this distinction at the constitutional level, it was already preparing to use it at the legislative level.

In fact, four years earlier, it had itself created the first Royal Commission on Broadcasting. What is more, the unanimous report of that Commission, presided over by Sir John Aird, and whose members had been appointed by the federal government, proposed in 1929 as a very first recommendation:

That broadcasting should be placed on a basis of public service and that the stations providing a service of this kind should be owned and operated by one national company; that provincial authorities should have full control over the programs of the station or stations in their respective areas.²

On the other hand, Quebec spokesmen at that time displayed ignorance and ineptitude. One has only to read the provincial Attorney-General's arguments in the 'radio case'.³ One has only to read his brief testimony in 1932 before the first Special Committee on Radio Broadcasting of the House of Commons where he spontaneously admitted: "The Dominion is absolutely in control of the legislation in that respect".⁴

In the face of such an admission, the federal government had an excellent opportunity to consign to swift oblivion the cumbersome constitutional considerations of its own Commission members. Of course, it behaved tactfully. That same year, the first federal act on broadcasting established the Canadian Radio Broadcasting Commission (forerunner of the Canadian Broadcasting Corporation), and made the provision that:

The Governor-in-Council may appoint not more than nine Assistant Commissioners who shall hold office during pleasure, and who shall not receive any salary...there shall not be more than one Assistant Commissioner appointed in any province, and the appointment shall be made after consultation with the Government of the province in which the Assistant Commissioner resides.⁵

It is a matter of record that provincial governments never had to be consulted for it was apparently never the Governor-in-Council's 'pleasure' to appoint assistant commissioners.

In 1936, the first redrafting of the Broadcasting Act that abolished the Canadian Radio Broadcasting Commission stated:

There shall be a Corporation to be known as the Canadian Broadcasting Corporation which shall consist of a board of eleven governors appointed by the Governor-in-Council and chosen to give representation to the principal geographical divisions of Canada.⁶

Needless to say, this new legislative text did not include any provision for the appointment of assistant governors. And besides, in the eyes of the new Act, Canada was only made up of "geographical divisions".

Nine years later, in 1945, the Quebec Legislature could well adopt a law authorizing the creation of a provincial broadcasting service.⁷ The Lieutenant-Governor could indeed ratify it, and the Governor-General of Canada could not repudiate it. Still, the Prime Minister of the Province understood that the hour of Radio Quebec had not yet come.

Having established all these facts, and given the present context, one might wonder whether the hour of broadcasting has not now come for Quebec. To put the problem in such an all-inclusive manner is immediately to raise another question: what does Quebec want? An operation like the Canadian Broadcasting Corporation? A governing body like the Board of Broadcast Governors? Or even both at the same time?

It is important to see clearly right now what a Radio Quebec on the one hand, and a Quebec Broadcasting Corporation on the other could be.

To want a Radio Quebec is essentially to want a second French network, operated by the province as a parallel structure and not intended as a replacement for the C.B.C. (Radio Canada).

This second network would be expected, within the territorial limits of Quebec, to complete the role of the first within Quebec, particularly in fields where private enterprise will not or cannot do it.

A fact to be noted here: to want to establish a Radio Quebec raises no constitutional problem, for it involves no infringement on Ottawa's sovereignty over the control of broadcasting in Canada. It simply means that Quebec wants the authorization to operate a broadcasting service in the same way that private enterprise is not able to do.

To be sure, although it raises no constitutional problem, it does raise a number of difficulties at the political level. Would Ottawa want such serious competition for the B.B.G.? Wouldn't they fear in it the beginnings of an escalation which could eventually lead to a refusal by a Radio Quebec to comply with the directives of the B.B.G.? Is Quebec, for its part, ready in the present situation "to ask for" something in the shadow of the Peace Tower...? Rather would it not be tempted to gain control of private enterprise by the use of intermediaries? Could it not also avoid all difficulty by turning resolutely towards closed-circuit broadcasting? The problem remains unsolved. The fact remains, nevertheless, that sooner or later, a Radio Quebec must and will exist.

To want a Quebec Broadcasting Corporation is another question altogether; it would mean no longer recognizing federal authority in matters of broadcasting. Let us keep in mind, however, that this does not infringe on the authority recognized

by London's Privy Council as belonging to the Government of Canada in matters of radio. This amounts to saying that the Department of Transport would continue to grant or refuse radio permits for broadcasting, but would limit itself solely to the criteria applicable to matters of air navigation for instance. The B.B.G. would no longer have control over program content that comes strictly under the heading of broadcasting. The CBC could continue to exist, but by a strange reversal of positions, in order to operate in Quebec, it would then have to obtain provincial permits, or at least be duly exempted. Let us point out, however, that such a procedure would not set a precedent for a federal Crown Corporation: the C.N.R., for instance, must, like anyone else, obtain permits from the Quebec Liquor Board to sell alcoholic beverages in "La Belle Province".

Fortunately for Quebec, the fact that interest has been lacking in the past has no bearing on the constitutional validity of its request, for in actual fact, we must recognize that for the last forty years only the federal government has really cared about broadcasting. It has even showed considerable zeal in this regard. We could look for a long time before finding another single area of Canadian activity, especially among those where the legislative and administrative competence of Ottawa appears juridically unassailable, whose agenda during the last thirty-eight years would comprise four Royal Commissions, one Committee of Inquiry, eighteen Special Committees of the House of Commons, eighteen voted and ratified acts and three reforms in depth, not including the one that will soon be

submitted to Parliament. To all this we would have to add the sums invested to balance the budgets, and the drive to foster the bilingual character of an institution that was certainly not the major reason for the creation of the Laurendeau-Dunton Commission.

This being said, and even disregarding the present situation, we should not think, for all that, that the federal government has no valid constitutional arguments to support its claim to the control of broadcasting.

Although not having done so earlier in broadcasting matters, nothing would prevent it today from invoking its residual power⁸ according to which anything not specifically reserved to the provinces in the Constitution automatically falls under federal jurisdiction. In that light, broadcasting is not even mentioned in the British North America Act of 1867.

Furthermore, our broadcasting system is characterized far more by its pan-Canadian quality than by its local and regional peculiarities. Therefore, the federal government is in a good position to claim that it alone has the capacity to ensure a service upon which, according to it, the unity of the nation so greatly depends.

However, it is obvious that the provinces, and especially Quebec, also have a supply of valid arguments. We must not forget that broadcasting is essentially an information, education, and entertainment medium. On that basis, the arguments of Quebec would undoubtedly be stronger than those of the central government, at least for a Latin mind more inclined to

see what broadcasting is in fact, rather than what it depends upon and what it entails. Let us add, moreover, that broadcasting is, if not by right at least in fact, the sole information, education and entertainment medium not to fall under the strict control of provincial censorship or a public commission. One would certainly have to concoct a flawless argument to justify cutting it off from all its natural associations - with the written press, for example.

Finally, to want both a Radio Quebec and a Quebec Broadcasting Corporation is of course to want a lot, to double up, but it in no way alters the political and constitutional principles of the problem.

Forty-eight years of licensing - of licences granted most of the time for good purpose. But the fact that licensing has been going on for forty-eight years is not a very good counter-argument in the eyes of a Quebec which is increasingly becoming its own master. It is high time to reread Sir John's report.⁹

Footnotes

1. Judgment of the case: In the Regulation and Control of Radio Communication in Canada (1932) A.C. 304.
2. Report of the Royal Commission on Radio Broadcasting, Ottawa, King's Printer, 1929, on p. 13 of the French translation.
3. In the matter of a Reference as to the jurisdiction of Parliament to regulate and control Radio Communication (1931) S.C.R. 541 and In re The Regulation and control of Radio Communication in Canada (1932) A.C. 304.
4. House of Commons Debates 1932, Special Committee on Radio Broadcasting, Minutes of Proceedings and Evidence, No. 11, April 13, 1932, p. 477.
5. An Act respecting Radio Broadcasting, 22 - 23 George V, S. Can. 1932, Ch. 51, section 6.(1)
6. An Act respecting broadcasting, 1 Edward VIII, S. Can. 1936, Ch. 24, art. 3, para. (1).
7. An Act authorizing the creation of a Provincial Broadcasting Service, 9 George VI, S. Q. 1945, ch. 56.
8. British North America Act, 1867, sec. 91.
9. Report of the Royal Commission on Broadcasting (Chairman - Sir John Aird), Ottawa, King's Printer, 1929.

A Cultural Policy for Quebec

Jean-Charles Falardeau*

Let us reconsider history. It is evident that at Confederation the intention was to give Quebec control over that which would ensure the safeguard of the French-Canadian culture. The concept of culture in the sociological sense in which we understand it today was not accepted in the middle of the nineteenth century. We should not be astonished at not finding it in the declarations of the Fathers of Confederation nor in those of the ecclesiastical and political leaders of French Canada. Monseigneur Bourget and Georges-Etienne Cartier were satisfied that the Constitution recognized the rights which, in their eyes and for their era, reinforced the foundations of our French and Catholic identity: rights regarding religion; rights regarding language; civil rights which, in particular, laid out the organization of the family and the patterns of ownership (rural); control of public education which was to be a vehicle for religious faith and language.

An Imperfect Past

It is almost unnecessary to note that since 1840 the French-Canadian nation has been defined by its natural leaders, the clergy, as a nation which is first and foremost Catholic.

* Mr. Falardeau is a professor of sociology at Laval University.

It is because it was to remain Catholic that our nation was to remain French. Until recently, this assumption was crystallized in the main slogan of traditional rhetoric: "language, guardian of the faith." It is easy to understand why the first blows to French-Canadian hopes for Confederation, provoked by the different French school crises outside Quebec, were so deeply felt: in Manitoba in 1870; in the North-West Territories in 1905; in Ontario in 1917. To refuse language rights to the French language was to pose a threat to our religious identity.

Let us not lose sight of this phenomenon of great import: the French language has never had for our society anything but a subservient and instrumental character. It was the vehicle of a religious faith. One has only to read once again the Report of the first Congrès de la langue française of 1912! There have been very few people during the course of our intellectual history for whom French was chiefly the expression of a civilization and a way of thinking. It is easy to name them off quickly: Arthur Buies, l'Ecole de Montréal, Olivar Asselin, Louvigny de Montigny, Victor Barbeau, a few contemporary writers...

The 1867 Confederation concentrated in Quebec, therefore, the conditions and the rights that were felt to be necessary for the maintenance of the cultural identity of the French Canadians. The essential elements of this culture, language and educational institutions, have been subordinated historically to a religious and monarchical conception of life

in society. It is in the extent to which today's great technological adventure encompasses the overthrow of our social structures, in the extent to which ideological changes result in a secularization of attitudes, that the French society of Quebec must redefine its culture. Considering that we are in the process of forming, for the first time, an authentic state of Quebec and considering that this state must, if it wishes to avoid failure, take on all the directive and planning functions of a state, it is therefore urgent to outline its responsibilities with regard to our culture in the future. Disintegration of our traditional culture; emergence of a new Quebec state: these two factors must serve as guidelines to orient our thinking on a cultural policy for Quebec in 1967.

A Conditional Future

Let us reaffirm what seems to us to be a principle of primary importance. Since the state of Quebec is the historic and political centre of the French-Canadian nation, it is solely responsible for our cultural destiny. Quebec's responsibility is to take steps to aid in the fulfilment of this destiny, if not to direct its course. By "culture", we mean the whole technical, institutional, mental and spiritual heritage of a society. Culture understood in this collective sense is not diametrically opposed to personal culture, a term which we use to describe a certain stage in the blossoming of an individual's intellectual and spiritual faculties. The

former culture conditions and expresses the latter at one and the same time. The members of a society will attain greater excellence if the common ground that nourishes them is rich and invigorating. Then in turn it is the original thoughts, the individual initiative and invention which guide and transform the collective culture.

In our "technatomic" age, the methods of mass communication, the "dream techniques" as Malraux called them, have created new types of expression, of sensitivity, of mythologies - a mass culture which is in danger of replacing the original cultures. A national culture is much more able to resist such invasions if it is firmly anchored in a strong tradition, if it has long since learned to produce its own antibodies. In this connection we realize only too well that our culture is especially vulnerable. The parts of it which are worth saving form a thin and tenuous groundwork. We had become accustomed to regarding our culture as an unalterable datum. We now realize that we must re-create it. We find that under the pressure of the socio-economic forces which are shaping our milieu, our social structures are becoming increasingly secularized. New values must take the place of the old theocratic and moral imperatives. We must be the artisans of a culture in the making.

This development must nevertheless take root in what, for us, constitutes most deeply ourselves: our French identity. One element of our culture must be replanted in the centre of

our destiny with a new solidity: the French language. No longer, as in the past, can language be regarded as the support of the catechism, preaching and confession. But rather our language must be conceived of as being at the very core of a way of thinking, as the firmly defined vehicle for the expression of our identity. We can repeat it ad infinitum: our culture will be French or it will not be at all. I shall add a dramatic conviction: our generation is the very last in our history which can still bring about this survival. In twenty years it will be irreparably too late.

We must also call to mind certain obvious facts which are only too familiar. We have let our language be weakened dangerously. It is continuously being attacked and undermined at all levels by English influences. As a result, we are incapable of assuring its restoration alone. We must draw intensely and incessantly on the resources of the French-speaking nations of the world, most important, on those of France herself. We take a justified pride in the great dam at Manic. Alone, we cannot reactivate ourselves as Frenchmen. We must resolutely accept the fact that for some time to come, our culture will be a transformer connected to the generators of France. Manic without the Seine or the Loire has no significance for us.

The Present Imperative

Thus we have defined for us the most important task of the Quebec government. This task transcends the divisions

between the jurisdiction of each particular ministry. It must mobilize the entire government simultaneously. If the government of Quebec really considers itself as that of the state in which the destiny of the French-Canadian nation and culture are being restored, it must also see itself as defender and stimulator of this culture. The logic of history and the urgency of present problems demand it. I do not mean to say naively that our state should become the creator or the legal protector of culture. I simply call to attention that it must institute a cultural policy. A policy which would involve precise, well-defined measures based on a postulate that allows room for no compromise: the primacy of the French language.

Such a policy carries with it obligations inside and outside the Quebec milieu. The first article of the internal policy does not need to be formulated, for it has already been proposed in several declarations. We must declare French to be the primary language of Quebec and define through legislation the important consequences resulting from this declaration. French should become the working language of the public administration, of relations between the state and the public and private companies, within industrial and commercial enterprises and in the relations of these enterprises with the public. The state should also ensure in a stringent and permanent fashion that French-language textbooks are used at every level of instruction including university, and in French-

speaking establishments (conciliatory measures could easily be put into effect for establishments attended by both English-speaking and French-speaking students). If necessary we must promote this goal by appropriate types of subsidies, by importing scholarly works from France, as long as we are not ourselves in a position to produce all the French tools for the communication of knowledge. Numerous other corollaries follow from a policy founded on the primacy of the French language. To fulfil this by common consent it would be sufficient for us to draw our inspiration from the French good sense which only requires reawakening in us.

The requirements of our external policy derive from the same logic. No culture is living if it is not in rapport with other cultures to contribute to them and to learn from them. We must remain receptive to ideas from the rest of the world, and above all from the French-speaking world. The consolidation of a network of new relationships among French-speaking nations must revive our confidence in French civilization and, indirectly, in ourselves. First of all, the rejuvenation of our French identity must spring from the spirit of France itself. Not an archaic, sentimental abstract France, but the concrete France of our day, technological and scientific as well as literary and scholastic. Our need of this many-faceted France does not show us in the role of beggars or colonials. It expresses the needs of anemic adults deprived by America of oxygen and red corpuscles. Agreements

between France and Quebec are the first steps of a process which must be broadened, diversified and consolidated. Just as we need French textbooks, I cannot help being convinced that right away and for several years to come we need a great influx of teachers from France at the primary, secondary and professional levels. For how, if not in this way, are we to be forced to know eventually how to name in French the instruments of technology, to know in French the methods of using them, to formulate in French our North American identity and to ward off, in French, the obstacles which threaten it? The same arguments justify everything there is to say about the necessity of increasing the number of exchanges in the fields of radio and television, of films and the theatre. I insist deliberately on these fields (which obviously do not exclude those of books and works of art). In fact, since the techniques of mass communication will spin, from this moment on, the web of our daily lives, let us act in such a way that the prey that they catch for us is French.

It is in the perspective of these pressing matters that the other innumerable forms of assistance to the works and institutions from which culture draws its life-blood, must be clarified and organized. It is also in this perspective that the respective jurisdictions of the governmental ministries which are more directly interested in these works and in these institutions must be redefined and co-ordinated. I am thinking of the Department of Education, and also of the ministry which

I propose calling "of Culture" rather than "of Cultural Affairs" - a title which seems to suggest that culture is a conglomeration of little things.

Quebec has entered, as it must, into economic planning, into social security programs, into a monumental effort to educate youth and adults alike. These efforts, especially that of education, will be futile if, in principle and in fact, they are not inspired by bold cultural planning. The Parent Report granted great importance to "cultural pluralism" which, in its opinion, our system of education should recognize. This expression has a certain accuracy if one wishes to use it to signify the state of diversification at which our society has arrived. However, it can be meaningless if we let it degenerate into a sort of intellectual neutrality which cannot but result in a Balkanisation of our cultural life. We cannot continue to let ourselves be nothing but Helots within our own borders.

Post-Script

And Ottawa? I think that our first task is not to trouble ourselves with the worries of the federal government. It can, if it wishes to do so as a result of the recommendation of the Laurendeau-Dunton Commission, intensify its efforts in the fields of Canadian bilingualism, co-ordinate the cultural initiatives of the English-speaking provinces, etc. It is not from it that we have to take our orders or our inspiration. It is up to us in Quebec to formulate a cultural policy for

Quebec - for ourselves and for others also. I am thinking of those French-speaking people in Canada who will wish to warm themselves before a fire which we will try from this day on to render as warm and glowing as possible.

A Policy on Language in Quebec and in Canada

Jacques Brazeau*

Throughout our history, the use of languages has been a very uncertain question. At a time when we are drawing up the balance sheet of a hundred years of federalism, this uncertainty is still present. It is difficult to define precisely Canadian bilingualism, the status of the country's official languages, and that of the other languages in use. The adoption of a language policy and the political implications of the linguistic question are still difficult to predict. We can either rejoice or be saddened by this state of affairs, but we cannot ignore the fact that the problem of languages is still very much with us.

A rapid historical flashback enables us to review the traditional attitude towards this state of affairs. An examination of the main types of measures which can be adopted when several languages come into contact shows also that we have adopted a dual system.

During the past ten years, we have attempted, in Quebec, to start a discussion on the use of languages. Perhaps by mentioning some of the effects of present linguistic practices on our industrial society, we can try to explain the current

* Mr. Brazeau is a professor of sociology at the University of Montreal.

unrest and predict the possible future orientation of language usage.

Historical background

The arrival in Quebec of British administrators meant that a practical choice had to be made. The military governors of 1760 hired Huguenot and Swiss secretaries, published their edicts in two languages, and adopted French for legal matters. Bilingualism was recognized in trade, administration, law, and then in Parliament when, through the Acts of 1774 and 1791, great care was taken not to decide the question constitutionally. It was, therefore, through custom that Quebec's bilingualism was established at a time when Canada had a French majority.

Hopes and fears that English unilingualism would come to pass were nonetheless still present. A policy of assimilation continued to prevail and was clearly revealed in the Act of Union. The Act of 1840 established one language in Parliament; it laid down a constitutional clause concerning linguistic matters at a time when English-speaking representatives were becoming the majority. This fact is clearly seen in the aftermath of the Rebellion. Because English and French populations were concentrated each within its own territory; because each province had its own laws; because of the important role played by politicians, bilingualism in Quebec was to continue, and unilingualism in Ontario was to flourish. The Act of 1867 is most definite concerning the use of languages. It does not, however, contain any statement of principle. It allows or requires the use of English and French in parliamentary and

judicial matters pertinent to the Federal and Quebec governments. This exactitude has since resulted in a clash between those who interpret the Constitution in its most limited and literal sense, and those who interpret it in its widest possible sense as meaning recognized bilingualism. Because the Act of 1867 lends itself to conflicting interpretations, the use of languages has been a subject of strong debate.

We have lacked a consistent policy in areas of public life where this Act has not been explicit: for instance, in civil and military administration, in cultural and educational activity, and in all the governmental activity of provinces other than Quebec. Due to shifts in population, the de facto privileges which the French language acquired in the Atlantic region were discontinued after 1867, and the rights it legally held in Manitoba were repudiated by the provincial government without any federal intervention.

On the other hand, in Ontario and New Brunswick, the demographic and cultural evolution of French-speaking groups encouraged the adoption (following struggles over the school issue) of compromises concerning the use of French in schools. On the federal level, in cultural and administrative matters, the steps taken by the central government towards bilingualism surpass the literal interpretation of the Act of 1867. This is amply demonstrated by the creation of French radio and television networks. It must be noted, therefore, that the absence of a definite language policy has not always and

necessarily been a disadvantage to the second most important language in this country, i.e., French.

Study of the measures adopted in the face of linguistic pluralism

Three main types of measures can be taken when populations of different languages are gathered within the same political entity. A single language may be adopted by law or by custom by not taking any steps to recognize the existence of the other idioms, and by expecting that all will adopt the privileged language.

The educational and administrative unilingualism which was finally adopted in the United States, and the unitary ideology which accompanies it, have greatly influenced the Canadian outlook on the question. We have adopted a similar stand concerning native languages, languages spoken by immigrants, and that spoken by French minority groups in regions far from Quebec. One common solution to the problem of pluralism is to aim for unilingualism, while, in the interim, permitting bilingualism in the private sector. The definition of Quebec and Canada as bilingual rather than multilingual states supposes that the French- and English-speaking groups wish to assimilate other groups.

Assimilation is not incompatible with maintaining multilingual states. A multilingual state can, in fact, be formed by uniting unilingual territories. This is the case in Switzerland, where each language has a district, and where the objective is to assimilate those coming from the outside. If a cultural grouping is to be maintained as such, then strict measures have to be applied in order to ensure that the minority

groups created by shifts in population are rapidly assimilated.

In Canada, we have attempted to ensure the unilingualism of various provincial territories, and to assimilate Indians, various immigrants, and French-speaking people into the English-speaking civilization. Public schools, and a unilingual administration were used to achieve this end. On the other hand, although English-speaking provinces were recognized as such, there was no corresponding recognition of the unilingual character of other regions. Rather, there was opposition to the concept of bilingualism as it exists in Quebec and in the offices of the federal government.

However, there are some countries, such as South Africa, which have recently opted for bilingualism throughout the whole country, rather than bilingualism by maintaining separate districts for each language. Such an arrangement has not been seriously considered in Canada, even by those who interpret the Act of 1867 in its broadest sense. Had bilingualism been officially in force in Manitoba at the beginning of the century, Canada would have had some bilingual regions and other regions where only English was spoken. After the military conquest, although the French were in the majority, they had no political power. Then, beginning with the nineteenth century, immigration worked against them and their importance in terms of population declined. These two factors prevented the adoption of nation-wide bilingualism.

Therefore, the use of languages in Canada does not follow any of the three patterns mentioned: unilingualism

through assimilation, bilingualism by means of territorial unilingualism, or nation-wide bilingualism. Canadian bilingualism is a mixture: the central government favours the use of the two languages in many respects; some English-speaking provinces, with important concentrations of French population, grant them privileges in the educational field; and Quebec, with a majority French population, is officially bilingual and has an English-speaking minority which is privileged by the fact that it belongs to the national linguistic group which is in the majority. Because of the force of numbers and the variety of ways in which the language question has been accommodated, Canada, viewed as a whole, has one main language and one official secondary language which has been placed in a subordinate position.

The language situation in Canada is less than stable. The English language and civilization have a great capacity for assimilation, due to the North American influence, and also due to the supremacy that has been granted them throughout the country. From a global viewpoint, English is considered to be the main language of civilization; hence, its capacity for assimilation can be felt even in the midst of the main concentration of the French population, i.e., Quebec.

This influence, rightly or wrongly, may be said to be pernicious. It is possible to take a political stand on the status and use of the two languages in Quebec. In Belgium, a bilingual system comprising two unilingual districts has replaced the Flemish-French bilingual system which existed

earlier in Flanders. The instability created by this change in Belgium is comparable to that of the Canadian system. The possibility that bilingualism might eventually be abandoned in Quebec in favour of French unilingualism thus adds to the instability of the language situation in Canada.

Some effects of bilingualism in Quebec

The French and English languages have certain recognized privileges in Quebec in the legal and parliamentary fields. In addition, the acceptance of the bilingual nature of the province is evident at the working level in public affairs. As a result, important cultural institutions in Quebec possess a dual nature. On the other hand, in private business, bilingualism in Quebec means freedom in the choice of language. This definition has given Quebec a complex of commercial, financial and industrial concerns whose working language is English. No legal obligation nor any social control based on custom forced these companies to use the language of the majority, in a situation where two languages were equally recognized.

English was assured as the working language because of the origins of big business, and also because it facilitated communications and ties within the whole North American industrial complex. In order to establish a rapport with the local labour force and clientele, businesses needed only to employ at lower levels a few bilingual secretaries, foremen and salesmen. Similarly, central government agencies in Quebec could be content with bilingualism in dealing with the public, while

using English as the official working language of its Quebec employees.

This arrangement has influenced the division of labour. In other words, the amount of responsibility and the number of privileges a person has depends upon which language is his mother tongue. The knowledge of English is still sufficient for the English-speaking person to have access to responsible positions in the administrative and technical fields, and English has become necessary for the French-speaking person if he is to have access to the less important openings of liaison work. French-speaking people have valued the ability to speak both languages because it enabled them to better their social status. To the extent that more French Canadians became bilingual, English-speaking people no longer felt the need to do so because the French allowed the social structure to remain as it was by playing the role of interpreters.

Special Status and the French-speaking
Minorities outside Quebec

Vincent Prince*

The French Canadians "exiled" in the English-Canadian provinces do not want to have anything to do with the secession of Quebec from Confederation. For them, Quebec independence would mean the end of the support which is basic to their survival. It would mean the end of French Canada as we know it today. Would such fears be justified if Quebec, rather than opting for separation, sought and obtained special status? In our opinion, the answer to this question must be negative. We would even go as far as to say that not only would our minorities be no worse off, they would probably gain some notable benefits. Naturally, these advantages are dependent on a form of special status which permits a true and solid federal link.

Special status would, in fact, permit Quebec to develop more smoothly according to the dictates of its "particular" nature, to instil more dynamism in its economy, and consequently to participate in and contribute more to the prosperity of the country. As far as English Canada is concerned, this would give Quebec increasing prestige, a prestige from which the whole French-Canadian culture would

* Mr. Prince is an editorial writer for Le Devoir.

benefit. People would associate the French Canadian less and less with what is backward and contemptible. The French Canadian would finally be accepted more as an equal partner, indeed as a stimulating partner.

It is not our intention to list the elements that would make up this special status. Let us take only one example. At present, because of our legal structures, our civil law is too often polluted by interpretations based on common law. If amendments were made providing as a minimum that all judges presiding in cases of first instance, as well as final appeals in cases under the jurisdiction of the Quebec Civil Code, be trained in civil law, our law would no longer be exposed to this corrosion and would be better able to reflect all the richness of the Latin and French legal spirit. Even the drawing up of our laws would be simplified and improved a great deal. In other words, we would be in a better position to benefit from the worthwhile contribution that French law has to make to Canadian legislation.

Successes due in part to Quebec's prestige

As far as the impact that changes such as these would have on our English-speaking compatriots, our success in one area or another would be accompanied by increased prestige. These fellow citizens respect these actions which are successful and bear fruit. Moreover, when one respects someone else, one is more inclined to accept his point of view and to meet requests.

Our minority groups provide proof of this. Far be it from us to minimize their past struggles - struggles carried on with much intelligence and dynamism and at the cost of inestimable sacrifices. However, few among them will not recognize that the reawakening and new outlook which has characterized Quebec over the last ten years has greatly aided their cause.

To find proof of this, one need only look to the most recent developments of the position of the French language in several provinces. The progress, though not as spectacular as one might hope it will be in the long run, represents a beginning which justifies an optimistic outlook. After what appeared to be implacable opposition, Saskatchewan has just permitted an hour and a half per day of French instruction to those students who wish it. This is a minimal step particularly when one remembers that the whole matter is dependent on the good will of the school boards whose generosity is yet to be established. However, it does represent a small opening which might in time, and with much patience, be made into something much larger.

Alberta has also made some progress within the last few years. In 1964 it amended Article 386 of its School Act to permit a little French instruction. Until then, a district school board could decree that the first two years of primary school could be taught in French (with the exception of an hour a day which would be devoted to the instruction of English) and

that an hour a day would be set aside for French in all classes above the second grade. Now, two hours of French a day are allowed at the grade three level while the rest remains unchanged. Moreover, it is well to remember that in 1963, just a year before, the Collège Saint Jean of Edmonton became a bilingual teachers' training school affiliated with the University of Alberta. This development was due as much to the co-operation of the authorities at the University of Alberta as it was to the Department of Education. Every year since, this teachers' training college has attracted a growing number of students.

More noticeable progress in Ontario and New Brunswick

The situation in British Columbia remains in the form of hopes but these at least have increased over the last little while. Official hostility to confessional schools remains as ardent as it has always been but appears to have become less stringent regarding French schools. Due to this change, our fellow citizens have decided to modify their stand and to opt clearly for French-language public schools. They are quite justified in believing that these will, in fact, be Catholic and that in this way they will be killing two birds with one stone. Though they have made no specific gain, at least the politicians' official line has been modified. A start in the near future on such schools, though it may only be partial, would not be completely unexpected.

Until now, in the West, it is in Manitoba that the most substantial gains have been made with the passage in 1967 of the act which authorizes school boards to permit instruction in French for half the daily hours of classes in the first twelve years. The act even received unanimous support. The changes it will bring about are still in the future. A certain degree of scepticism surrounds the discretionary aspect of the measure; however, the new legislation is certainly far superior to that which existed.

The situation is clearly brighter in Ontario - Quebec's very neighbour. Since 1965, the University of Ottawa has been receiving the same grants as similar institutions in the province. Within the last few years, the Robarts government has made possible the creation and success of a second bilingual university - at Sudbury. At the primary school level, bilingual schools have had less and less difficulty and it is not unlikely that before long Franco-Ontarians will have their bilingual schools completely incorporated into the public school system. The new attitude which has recently been adopted by Franco-Ontarians - not insisting on confessional secondary schools but rather asking for public secondary schools - ought to help resolve the problem. Premier Robarts appears to be decidedly in favour of this solution.

Finally, in the Maritimes, one is well aware of the progress which has recently been made at the university level as well as in the field of Acadian teacher training. The new

legislation concerning social equality, introduced by Premier Robichaud, will undoubtedly help Acadian schools at all levels. Moreover, this province has recently decided to introduce simultaneous translation into the Legislative Assembly and to publish official documents in both languages. Finally, a study is being made to assure Acadians a greater degree of bilingualism in the provincial court system.

A new interest in French

One could extend the list of developments which are taking place in every part of the country. One could speak of the increased bilingualism in the federal civil service and in the spheres of activity which come under the central government. One could draw attention to the increasing importance placed upon the instruction of French to English-speaking students in the different provinces (in 1966, 200,000 elementary students in the public schools of Ontario were learning French compared to only 75,000 in 1961) and to the increasing popularity of courses and French clubs amongst adults. Finally, one could mention the new step taken by the recent formation of the permanent committee of the Ministers of Education of the ten provinces that authorizes a program of interprovincial exchanges among French and English teachers at the primary and secondary school levels in 1967-68 as a means of bettering cultural relations between English and French Canada.

Nor should one overlook the new attitude that is apparent among politicians even at the provincial level.

Increasingly, these men are taking pride in being able to say at least a few words in French and practically none of them aspire to important positions at the federal level without a minimum degree of bilingualism. The number of English-speaking federal ministers under the Diefenbaker and Pearson governments, who are able to express themselves adequately in French, has not ceased to grow.

All these developments coincided with the re-awakening of Quebec and the increased prestige it has gained. It is therefore hard to understand how special status, which would strengthen Quebec and would permit it to show proof of its cultural wealth to the rest of the country, could hinder the French element beyond its boundaries. Obviously, as was stated above, the opposite would in fact be the case.

More wealth to share

Moreover, special status is not simply a question of prestige. This constitutional form would add to the dynamic quality of Quebec and permit it to better the quality and the intensity of its French-speaking life. In other words, there would be more wealth to share.

Of course, there would be no question of Quebec intruding in areas which fall under the jurisdiction of other provinces; it is up to the latter to guarantee the survival, and the impetus, of the French culture in their territories. However, several of these are dependent on Quebec's co-operation - particularly as regards the exchange of

teachers - to accomplish fully their mission.

Therefore, if Quebec were able to fulfil its role, either through an intensification of French-speaking life as a result of greater institutional autonomy or by more numerous agreements with the rest of the French-speaking world, it would be in a better position to work with its sister provinces and indirectly with the French minority groups which depend on it.

These latter groups, as they are well aware, must rely on aid of this kind rather than financial assistance.

Quebec likes to think of itself as a 'point d'appui' for French Canada, and the French-speaking members of the English provinces are increasingly receptive to this point of view which is quite devoid of imperialist motives. The more a 'point d'appui' is strengthened, the more it becomes synonymous with security to those who depend upon it.

Finally, in our opinion, special status would mean more than a more prestigious and stronger Quebec for it would provide for a détente and friendlier relation between English and French Canada. Such a development could not help but benefit our minority groups. It is a well-known fact that the colonies which united in Confederation were not overjoyed at the prospect of a federal system. It was Quebec's presence which necessitated this choice. Without Quebec, there would probably have been a legislative union.

In fact, it is obvious that English Canada has never been satisfied with this political framework. Although it has

often imposed its centralist ideas, this has not happened as often as it might have precisely because Quebec resisted them. It was in this way that the single mould, into which an attempt was made to place Quebec and the English provinces, became a source of inevitable irritation.

If Quebec achieved special status, the English provinces would no longer have to put up with decentralization which they do not want. They would be free to go their own way and would be liberated from a burden which has always impeded them. Quebec would no longer be synonymous with the obstacle to their unity. Quebec would no longer be the enemy it has always been.

Many observers have attributed the hostility of English Canadians towards the French element to the deep-rooted conviction that Quebec was preventing the rest of the country from having full freedom of action. With special status such feeling would have no cause to exist. The relations between English and French Canada would be radically altered. As soon as Quebec was no longer considered an impostor, there would no longer be the revengeful need to deny the rights of French minority groups. It is at least reasonable to foresee this and to hope.

In conclusion, special status would represent flexibility in place of the rigidity which exists in the present system. It would mean the rectifying of the political situation through the recognition of fundamental differences

which separate us one from the other. It would mean the end of an era of antagonism and the beginning of more honest collaboration based on mutual respect - respect which would permit each to organize his life as he feels is best suited to his needs.

It is for all these reasons that we favour special status and are putting forward the view that it would help the position of the French element outside Quebec. It is for all these reasons that we believe that, far from representing a preliminary stage of an independent Quebec, special status appears as the most effective means of consolidating Canada in 1967.

Quebec and International Life

Louis Sabourin*

The desire to have direct access to certain areas of international relations, the will to assert an individual personality on a world-wide level, and the resolution to benefit from universal values: these are the motives that condition Quebec's international aspirations. If it is easy to elucidate the meaning of Quebec's embryonic diplomacy, it is nevertheless extremely difficult to analyse its full scope. These objectives we hope to attain through the establishment of an official and distinct body representing Quebec in certain countries and specialized institutions. This will be brought about by the recognition of Quebec's right to conclude international accords in the areas of its legislative jurisdiction and by full participation in the activities of the many world bodies dedicated to the promotion of the interests and values of French-speaking peoples - these objectives, I repeat, can neither be envisaged nor justified in terms of constitutional criteria.

The importance of juridical norms in a federal state cannot be underestimated, but the provisions of the Constitution do not deal satisfactorily with Quebec's new inclination to play

* Mr. Sabourin was Dean of the Faculty of Social Sciences and has recently been named Director of the Centre for International Cooperation at the University of Ottawa.

a role in international affairs. Depending on one's point of view, these provisions can justify or challenge certain aspects of Quebec's international action.

Rights guaranteed by a constitution must be respected. But there is one right that has more rights than others: the right to individual and collective fulfilment. As a matter of fact, it is in terms of interest, power, and pro-French sentiment that we must define the direction taken by Quebec's international activity that is the result of an attainment of self-awareness and an awareness of others. In the past, French Canadians were interested in the world as individuals; today, it is French Canada that is taking an interest in things international. There is more than a numerical difference here; the whole dimension of the problem and the way of envisaging it have changed.

In an age where, due to the shrinking of the planet, the notion of interdependence between nations is acquiring a new meaning, French Canada has discovered that no society wishing to participate fully in this "universal civilization of give and take" can afford to withdraw within itself and fail to promote its interests beyond its frontiers.

The basic problem is not to be found at the level of objectives to be attained, but rather of measures to be taken in order to guarantee the development of French-Canadian society. It is not enough to ask oneself who can legally make this or that international overture, but who can, while at

the same time respecting the law, provide a society with the best means of asserting itself and of transmitting its thoughts abroad.

For some, the choice is easy: nothing short of the independence of Quebec will permit French Canadians to develop fully in the international community. For others, there can be no question of further undermining a power set aside for the federal government without considerably damaging the interests of the country and, as a result, those of French Canadians. It is self-evident that one runs the risk of falsifying the meaning of a problem by trying to oversimplify it.

As a matter of fact, nothing prevents the implementation of concerted international programs by different bodies provided that the rules of the game are established and respected by both sides. It must be admitted, however, that because of its desire to establish a system for international recognition of its specific character and to take charge of a development that is void of meaning if it does not project itself onto the world, Quebec is creating an extremely complex situation. In spite of all the comparisons that can be drawn to justify or repudiate such action, this problem has no valid juridical equivalent at the present time. Hence the interest it provokes, and the questions it raises.

All things considered, it is neither through citing the example of the Ukraine or Byelorussia - which, for solely political reasons, participate as founding members in certain

international organizations - nor through basing oneself on the models of certain federations such as Switzerland and West Germany - which permit their cantons and länder to conclude international accords with the approval of the central government - that one will advance the cause of Quebec particularism in the world. Rather, it can only be done by showing that Quebec needs to act in such a manner beyond its boundaries, and that it can adequately and advantageously serve the interests and aspirations of French-Canadian society on the international scene.

It is not by demanding the impossible that we shall be able to develop a possible special status for Quebec in international affairs, but by taking realistic positions and by demonstrating our determination and our imagination. Neither startling declarations nor partisan accusations will shake the convictions of those who believe that a special status for Quebec is not incompatible with a dynamic federalism both on a national and an international level. We must, nevertheless, attempt to define this status in a positive way, to show its advantages, and to lay down its limits. The task is enormous and, unfortunately, too few people have thus far accepted the challenge.

Clearly defined, the presence of Quebec in foreign affairs cannot only favour the development of French-Canadian society, but also make a singular contribution, in this period of international influences in all areas, to the re-evaluation

of formulae for the implementation of international programs in a federal state. But it is clear that we shall only reach this point if people are willing to accept the idea of a strong Quebec as a positive and not a negative element in the Canadian federation. The idea of Canada still has meaning, but the time has come to modify certain of its institutions that no longer do.

On the other hand, if it is badly defined and interpreted, this activity can only lead to grave consequences, especially if people seek indirectly either to re-examine the very essence of federalism rather than one of its forms of expression, or, on the other hand, to "congeal" it as a means of keeping it in better check.

If, in the relationship between Ottawa and Quebec, there is a litigious question that must be removed from its political context, it is certainly this one. But, is it possible to so neutralize a question that is primarily of a political nature? The idea of a special status for Quebec in the realm of international affairs is based essentially on the following ideas.

First, Quebec's position cannot be compared with the position of another Canadian province; any effort to put and keep Quebec at that level is automatically doomed to failure. Too many people are prone to showing how Quebec is different by what it does wrong, but they refuse to recognize its particularism when it presents constructive, dynamic programs that are not in line with conventional ideas.

Through lack of understanding or lack of imagination, they jump to the simple-minded conclusion that these programs constitute yet another step towards separatism! Almost all the gestures made by Quebec on the international scene - in particular, the cultural accords with Paris, the establishment of a Quebec House (Délegation Générale) and the recent trip by Premier Johnson to the French capital - have been unfortunately interpreted in this way by the vast majority of English-Canadian newspapers.

Such an attitude is deplorable for it is harmful to the necessary and inevitable co-operation between the two national groups. It is not by maintaining that what is different is similar but by trying to draw the maximum profit from Quebec's diversity and particularism that the problems will be settled.

Second, we must reject the erroneous conception which equates special status in international affairs to the granting of a disguised form of separatism. Such statements do not resist serious analysis. We must be swayed by the evidence, which is the particular situation of Quebec in North America. The seeking of numerous and frequent contacts with the French-speaking world is not only desirable for Quebec, but essential. Who would seriously venture to claim that the population of Alberta needs, for the same reasons and on the same level as French-speaking Quebecers, cultural, scientific and technical exchanges with the French-speaking world? It is unwarranted to maintain that the setting up of channels leading to the establishment by

Quebec of special links with French-speaking nations in accordance with pre-established conditions would result in the dislocation of Canada. How can it seriously be alleged that, once operational, such a system would not function when, at the same time, experience proves the opposite?

Third, it goes without saying that Quebec's international behaviour must not contradict the foreign policies of Canada. One imagines with difficulty that Quebec, under the pretext that it is sovereign in educational matters, would sign an accord in this domain with a country with which Canada had just broken diplomatic relations.

It is not true to maintain that collaboration between Ottawa and Quebec in this field is impossible. To the contrary, it is only under the sign of co-operation and consultation with Ottawa that Quebec's international activity can develop in the fields that do, or soon will, come under its constitutional jurisdiction. Seen from this angle, such activity cannot be contradictory but complementary to Canadian diplomatic activity.

Fourth, no country can permit its foreign policy to evolve outside whatever legal system it possesses. Now, in Canada, this system draws its various elements more from practice than written constitutional laws. As a result, faced with the questions raised by the obsolescence of Article 132 of the B.N.A. Act dealing with the problem of international treaties, and by the decision handed down by the Judicial Committee of the Privy Council in 1937 dealing with the inability of the federal

government to implement, within the country, accords whose nature places them within one of the areas reserved by the B.N.A. Act for provincial jurisdiction, it is essential that we take the following measures: (a) define the constitutional responsibilities of Ottawa, Quebec and the other provinces regarding the area in question; (b) set up an advisory body that would facilitate not only the conclusion but also the implementation of international accords that are of an essentially provincial nature; (c) create a body to study the legality of international programs and accords; (d) recognize Quebec's right to preliminary consultation before Ottawa negotiates an international accord in an area that belongs under provincial jurisdiction.

Finally, it must be admitted that the establishment of a special status for Quebec in the field of international affairs does not depend solely on Canadians themselves, but also on the attitude of other countries. If France has thus far reacted favourably to the international aspirations of Quebec, it is because Paris' position is sufficiently strong vis-à-vis Ottawa's and that such an attitude is in accordance with its national interests. But we cannot seriously expect that many countries would be ready to sign official agreements with Quebec. The recent stands taken by Senegal and Belgium are significant examples. Moreover, a quick reading of the statutes of U.N.E.S.C.O. and the I.L.O. shows that Quebec, as long as it remains within Confederation, cannot become a full member of these Specialized Agencies. One can easily imagine, nevertheless, that Quebec could obtain the

status of observer in these organizations. But this status will have to be accepted by the member countries of these institutions, and it is impossible to predict what would be the reaction of these countries, especially the reaction of those that are federal states.

Conclusion

Of all the questions that set Quebec against Ottawa, none has as large a long-term scope as the question of Quebec and international affairs. It is the future and the image of the country in the eyes of the world that are at stake. And, as one does not deal lightly with the future of a people, it is essential that we avoid oversimplifying the problem or side-stepping it only by pointing out the faults of the centralist thesis and the separatist option.

It is clear that we must seek solutions that take into account the democratic character of French-Canadian society. The question must be put in its entirety before ready-made solutions are imposed that do not correspond to the needs and the aspirations of the people.

The idea of a special status naturally raises difficulties, but it represents an honest and frank proposition, a rational answer to the legitimate aspirations of French Canadians. It is mainly a positive proposition that tends to recognize the particular character of Quebec in the Canadian federation and in the community of nations. This special status is not an easy route to follow; it is incapable of satisfying

those who prefer easy declarations to constructive propositions. Canadians must not forget that in the realm of "inter-national" relations, diplomacy still has some rights.

